

Statement of Position

**National Association of Theatre Owners
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RIN 1190-AA63, CRT Docket No. 126

**Non-Discrimination on the Basis of Disability by
Public Accommodations – Movie Theatres: Movie
Captioning and Audio Description**

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National Association of Theatre Owners™

I. National Association of Theatre Owners (NATO)

NATO is the largest association of motion picture theatre owners in the world. Headquartered in Washington, D.C., NATO's U.S. members include all of the 10 largest U.S. motion picture theatre circuits and hundreds of small companies. NATO's members operate motion picture theatres in all fifty U.S. states and U.S. territories. NATO members operate 32,000 of the 40,000 movie screens in the United States. A majority of NATO's members fall under the definition of "small business" as defined by the Small Business Administration's Size Standard of \$38.5 million in annual revenue.

The motion picture theatre industry is currently in the process of voluntarily installing closed captioning (CC) and audio description (AD) in movie theatres throughout the country. Today, more than 60% of the screens operated by NATO members offer both CC and AD and additional systems are being installed every day.

In the Notice of Proposed Rulemaking (NPRM), the Department of Justice repeatedly states that it does not know what the industry has done regarding CC and AD; it does not know the costs or the time required to purchase, install, operate and maintain CC and AD systems; it does not know the extent to which persons with severe vision loss or severe hearing loss will use those systems and it does not know whether it is appropriate to include movie theatres that do not have digital projection systems under the rule.

NATO has hard data that answers these questions and the other questions presented in the NPRM. We welcome this opportunity to provide data that is called for in the NPRM.

II. Joint Recommendations to the DOJ

In addition to these comments, NATO, along with the Alexander Graham Bell Association, Association of Late Deafened Adults, Hearing Loss Association of America, and the National Association of the Deaf, has filed Joint Recommendations to the DOJ (hereafter "Joint Recommendations") regarding motion picture captioning. The consensus positions outlined in the Joint Recommendations were reached after much discussion and provide a dynamic system for providing closed captioning in all digital theatres and the flexibility of basing the number of individual CC display devices at each theatre on the demand for such devices by the patrons of that theatre. Under this flexible system, if demand increases, additional display devices must be provided without the need for additional Department rulemaking. NATO, along with its partners in the advocacy community, strongly urges the Department to adopt the proposals outlined in the Joint Recommendations.

III. Summary of Position

A. Availability

NATO believes that CC and AD should be available to all movie patrons who can benefit from these devices.^{1,2} However, the fact that the industry currently has voluntarily installed these systems in a majority of its screens and the fact that the largest circuits have publicly announced their commitments to install CC and AD in all their digital screens has eliminated the need for a mandatory rule. NATO believes that if the Department examines the data provided below, it will conclude that the public interest does not require that a rule be adopted since the industry is currently providing access. However, if Department does adopt a rule, NATO recommends the following.

B. Scope of Rule: Closed Captioning

In the Joint Recommendations, NATO and its advocacy partners support equipping 100% of digital screens with closed captioning technology. The joint document contains a flexible, market-responsive proposal for closed captioning device scoping that NATO and its partners believe will best serve the needs of the deaf and hard of hearing communities. The proposal requires all theatre complexes to stock a minimum number of devices³, dependent on the complex's screen count. The proposal requires movie theatres to track weekend consumer demand for the devices and adjust stock semiannually as necessary based on this demand. Additionally, theatre companies will be required to submit an annual report of their tracking records to the Department.

C. Scope of Rule: Audio Description

NATO supports the Department's requirement to equip 100% of digital screens with audio description technology. However, the NPRM's requirement that movie theatres have one AD device per screen with a minimum of two devices per theatre complex greatly exceeds the needs of patrons with severe vision loss. While the Department is correct that certain assistive listening headsets have a second channel for audio description, these are not universally deployed and many theatres still rely on a simpler assistive listening headset. NATO recommends requiring one AD device per two screens, with a minimum of two devices per theatre, rounding up to the nearest whole number in the case of a fraction.

D. Compliance Date

In the Joint Recommendations, NATO and its advocacy partners have proposed an alternate compliance period that will ensure a reasonable amount of time for manufacturers to deliver and install CC systems. Under this proposal, theatre operators will issue purchase orders for CC systems and baseline device counts specified in the rule within six months of Final Rule

¹ In its statement in response to the 2010 ANPRM (RIN 1190-AA63) NATO argued that CC and AD cannot be mandated under the ADA. This is still NATO's position and NATO incorporates the legal position taken in response to the ANPRM herein.

² As noted in the NPRM, if a rule is adopted, any company is entitled to offer a lesser accommodation based on the "undue burden" provisions of the ADA. This is an important factor for NATO.

³ The word "device" as used in these comments means individual closed captioning display units or AD headsets to be provided by the theatre operator to the theatre patron.

publication. Equipment must be installed and operational, and staff trained on use of the systems, either within six months of system delivery or within two years of Final Rule publication, whichever comes first. NATO proposes the same compliance period for AD systems.

E. Analog Movie Screens

NATO recommends that consideration of analog movie screens be deferred. Several of the major Hollywood studios have indicated that they will soon be distributing movies exclusively in digital format and most independent producers are expected to follow suit. NATO believes that within a few more years there will no longer be movie theatres showing a film product.

F. Notice and Advertising Requirements

In the Joint Recommendations, NATO and its advocacy partners have proposed a series of marketing requirements for theatres, including posting information on the company's website; urging third-party websites to include accessibility information with show times; and explanatory signage near the box office. NATO and its advocacy partners have also agreed on a list of voluntary commitments, filed as an attachment to the Joint Recommendations, meant to increase awareness of available technology.

G. Equipment Maintenance and Employee Training

In the Joint Recommendations, NATO and its advocacy partners have proposed a number of requirements for equipment maintenance and employee training. These proposals include requirements that devices be available, clean, and function according to their design when requested by a patron. In addition, it is required that (1) all staff be trained as to the availability of the technology; (2) that a staff member who is knowledgeable regarding system operation and trouble-shooting be on-site at all times; (3) that staff training be reinforced on a regular basis; and (4) that all theatres develop reasonable staff training and equipment maintenance programs to meet the needs of patrons and any Department rule.

H. Drive-In Theatres

NATO supports the Department's conclusion that drive-in theatres should not be subject to CC and AD requirements as technology does not currently exist for providing CC and AD in a drive-in theatre setting.

I. Movies That Lack Captions and Audio Description

NATO supports the Department's conclusion that movie theatres are in no way prohibited or limited from exhibiting a movie that is not available with captioning or audio description because the movie has not been produced, distributed, or made available with such technologies.

NATO Response to Questions Posed in the NPRM

Question 1a: Availability of Analog Film Prints

The Department is interested in any recent data available about the likelihood that analog film prints will be available after 2015 either from the major studios, from smaller independent studios, or from small independent filmmakers. What is the likelihood that analog film prints will be available in five years? Will analog versions of older movies continue to be available for second or third run showings? How many movies will continue to be produced in both analog and digital formats?

Question 1b: Availability of Movies with Captions and Audio Description

What percentage of currently available analog films has been produced with captions or audio description? How many movies will be produced with captions and audio description in both analog and digital formats? What is the likelihood that existing analog movies that currently do not have captions or audio description will be converted to digital formats and then only the digital format would have those accessibility features? Will those older analog movies that are currently available with captions continue to be available with captions?

Question 1c: Economic Viability of Analog Theatres

How many analog theatres currently show first-run movies? If first-run analog movies are no longer produced, will analog theatres be economically viable and what types of movies would these theatres rely on to generate revenue? How many analog theatres are likely to close as the result of these changes in the market? Will this rule affect the pace by which analog theatres convert to digital cinema? If so, how? Will analog theatres converting to digital cinema convert all screens at the same time?

Answer to Questions 1A-C:

The Decline of Analog Screens

As of November 2014, there were 39,956 movie screens nationwide. Of those, only 1,536 were analog 35mm film, representing 3.84% of total screens. The remaining 38,420 screens have all been converted to digital or are new digital builds. Analog screen counts have been declining precipitously in the past two years: In November 2012, there were 7,596 analog screens; by November 2014, that number had declined 80%. NATO expects this rapid decline to continue.

The Decline of Analog Film Prints

While a number of studios recently struck an agreement with Eastman Kodak Co. to purchase 35mm film stock at the behest of some filmmakers, the overwhelming trend among movie studios is to distribute movies solely in digital format. A number of movie studios both large and mid-sized have informed exhibitors or news outlets that their products would only be available in digital format, with very few exceptions. Independent movie producers are expected to follow suit. NATO anticipates that analog film prints will be nearly obsolete in five years.

Deferment of Rulemaking Regarding Analog Theatres

Given these trends, NATO does not expect analog theatres to be viable within a few years, and supports the Department's suggested deferment of rulemaking regarding analog theatres.

Question 2: Does the definition of "movie theatre" adequately describe the movie theatres that should be covered by this regulation? Are there any non-profit movie theatres that would be covered by this definition? How many non-profit movie theatres are there? Should drive-in movie theatres be excluded from the definition of movie theatres at this time? Is there technology under development that might make it possible for drive-in movie theatres to provide closed captions or audio description in the future?

Answer to Question 2:

NATO does not have sufficient information regarding non-profit theatres to respond. NATO does not object to the proposed definition of "movie theatre." NATO supports the Department's conclusion that drive-in movie theatres should be excluded from the definition of movie theatres, as CC and AD technology for drive-ins does not exist at this time. Given the low number of drive-ins in the United States, such technology is unlikely to be created.

Question 6: Consistent with President Obama's Memorandum issued on January 18, 2011, on regulatory flexibility, small business, and job creation, the Department invites comment on ways to tailor this regulation to reduce unnecessary regulatory burdens on small businesses.[32] For example: Should the Department have a different compliance schedule or different requirements for digital or analog theatres that have annual receipts below a certain threshold? If so, what should the schedule, requirements, or financial threshold be? Or, should the final rule have a different compliance schedule or requirements for single-screen or miniplex analog or digital theatres? Will all mega and multiplex theatres have converted to digital by the time the final rule goes into effect? Is a four-year compliance date reasonable for those screens that will remain analog? Please provide information to support your answer. Should the Department adopt a different compliance schedule or different requirements for nonprofit movie theatres? The Department invites comment on these alternatives and any other ways in which the final rule could be tailored to appropriately minimize costs on small theatres.

Answer to Question 6:

As indicated in NATO's response to Question 1 A-C, NATO believes that within four years, very few analog theatres will remain. By the time this rule becomes effective, there will be few if any megaplex or multiplex theatres that have not converted to digital. In the Joint Recommendations, no separate compliance schedule based on revenue is proposed. However, it is recognized that all theatres should continue to be able to apply the "undue burden" defense to the requirement of any final rule.

Question 7: Is the proposed six-month compliance date for digital screens a reasonable timeframe to comply with the rule? Is six months enough time to order, install, and gain familiarity using the necessary equipment; train staff so that they can meaningfully assist patrons; and meet the notice requirement of the proposed rule? Will manufacturers have the

capacity to provide the necessary equipment for captioning and audio description as of the six-month proposed compliance date of this rule for digital movie screens? If the proposed six-month date is not reasonable, what should the compliance date be and why? Please provide specific examples, data, or explanation in support of your responses.

Answer to Question 7:

Insufficient Compliance Window

NATO believes the compliance schedule outlined by the rule is unrealistic and burdensome on all theatre operators. Six months is insufficient to give the industry – exhibitors and manufacturers alike – time to comply with the rule.

The proposed compliance schedule is also a drastic departure from the schedule proposed in the 2010 ANPRM. In the ANPRM, the Department recommended that fifty percent of digital screens be equipped with CC and AD over five years. The NPRM now requires one hundred percent of digital screens be equipped with these technologies in ten percent of that time.

Installation Process

A motion picture theatre operator cannot contact a CC and AD equipment vendor, order a CC and AD system and expect delivery of an “off the shelf” product within a matter of weeks. The process of ordering, receiving, and installing CC and AD systems can take months; further time may be required to address any issues with the equipment before it can be rolled out for patron use.

Once a theatre operator selects a CC or AD system, the vendor must present a bid to the theatre operator based on the price of the entire package to be purchased, whether or not the purchase includes installation, the number of systems/devices to be purchased and equipment availability. In many cases, the CC or AD system must be customized to integrate with the digital servers in the theatre.

Theatre owners currently are experiencing a delay of months in getting delivery of the equipment that they order. Moreover, once the equipment arrives, it must be installed by a trained technician. Only a few of the largest chains have such trained technicians. The great majority of NATO members must utilize the services of installation technicians working for the equipment vendor or third party installation companies. There is currently a waiting period before these installers are available.

Finally, once the system is installed it must be tested and theatre staff must be trained to operate the system and to explain to consumers how the CC display devices and AD headsets operate.

Based on the current time period that now exists between the time when a CC and AD system is ordered and becomes operational and the anticipated additional delays that will result from implementation of the proposed rule, a six-month compliance window is not reasonable and in many cases would be impossible to meet.

Recommended Compliance Window

In the Joint Recommendations, NATO and its advocacy partners have proposed an alternate compliance period that will ensure a reasonable amount of time for manufacturers to deliver and install CC and AD systems. Under this proposal, theatre operators will issue purchase orders for CC and AD systems and baseline device counts specified in the rule within six months of Final Rule publication. Equipment must be installed and operational, and staff trained on use of the systems, either within six months of system delivery to the theatre or within two years of Final Rule publication, whichever comes first.

Question 8: Should the Department adopt a four-year compliance date for analog movie screens (Option 1) or should it defer application of the rule's requirements to analog screens for now and consider additional rulemaking with respect to analog screens at a later date (Option 2)? Commenters are encouraged to provide information to support their recommendation.

Answer to Question 8:

As noted in the answer to Questions 1A-C, NATO supports the Department's suggestion to defer rulemaking on analog theatres.

Question 9: Do the alternative provisions regarding when and how to employ open movie captions strike an appropriate balance? Should the Department define what a timely request is in this context? Has the Department adequately addressed the possibility that new technology may develop that can be used to provide effective communication at movie theatres?

Answer to Question 9:

The ADA legislation and court decisions make it clear that the ADA does not require motion picture theatres to show open captions. Since the ADA doesn't require open captioning for motion picture theatres, the rule should not mandate any conditions for showing open captioned movies.

Question 10: The Department seeks public comment on its proposed scoping for individual captioning devices. If the scoping is not correct, what are the minimum number of individual captioning devices that should be available at a movie theatre? Please provide the basis for alternative suggestions. If the required number of individual captioning devices is linked to the number of seats in the movie theatre facility, should the percentage decrease for very large facilities with multiple screens? What should the threshold(s) be for this calculation? Should the Department consider different scoping approaches for small theatres? How so and why? Are there alternative scoping approaches that the Department should consider to address variability in demand for the devices across theatres? If so, please describe such alternatives in as much detail as possible.

Question 12: How many devices capable of transmitting audio description to individuals should each movie theatre have on hand for use by patrons who are blind or have low vision? Should the number of individual audio-description listening devices be tied to the number of seats in each auditorium or other location with a movie screen? Should the number of individual audio-

description listening devices be tied to the number of seats in the theatre facility as a whole? Please provide the basis for your comment. How many movie theatres have two-channel receivers that can be used to provide audio description? How many movie theatres will need to buy additional individual audio description listening devices? How much do audio description listening devices that meet the requirements of this proposed rule cost?

Answer to Questions 10 and 12:

The NPRM proposes that all digital theatres be equipped with closed captioning and audio description systems. The NPRM recommends that the number of closed caption display devices and audio description headsets required for each theatre be based on an estimate of demand applied uniformly to each theatre according to whether the theatre is a single screen theatre, a miniplex, a multiplex, or a megaplex. The uniform formula set forth in the NPRM assumes that all theatres of the same number of auditoriums will need the same number of CC display units and AD headsets without consideration of deviations in attendance between theatres or demographic factors. However, it is common knowledge that when comparing theatres of the same size, one theatre may have significantly greater attendance than another. Furthermore, certain geographic areas have greater concentrations of persons who have significant hearing loss or vision loss than others.

The formula established in the NPRM is static. It mandates a specific amount of devices per theatre. If a theatre has the required number of devices, it complies with the ADA. If demand for the devices exceeds supply, there is no requirement that the theatre operator buy additional devices. If the number of required devices greatly exceeds demand, theatre owners cannot move devices to other locations. Finally, since the formula does not consider attendance variability or demographics, it cannot be expected to accurately predict demand regardless of the formula.

NATO and its advocacy partners recognized this basic flaw in the NPRM proposal. We also recognized that if the rule as proposed was finalized it would be many years before the Department could amend the rule.

NATO and its advocacy partners have therefore recommended that the final rule require that:

1. All digital screens in a motion picture theatre complex be equipped with closed captioning systems.
2. The minimum number of fully functioning and operational CC display devices per theatre complex be:

Single screen	-	4 devices
Miniplex (2-7 screens)	-	6 devices
Multiplex (8-15 screens)	-	8 devices
Megaplex (16 + screens)	-	12 devices

3. Subsequent to the compliance period, all movie complexes covered by the rule will track and record weekend (Friday, Saturday and Sunday) demand for CC access. Theatres will compute the total average weekend demand no less than every 6 months.
4. Theatres will adjust the number of available CC display devices in each theatre to an amount equaling at least 150% of the average weekend consumer demand experienced by the theatre during the tracking period.
5. If a theatre must add units at the end of a tracking period, all such additional devices will be ordered or reallocated within 30 days of the end of the tracking period. However, in no event will the number of CC devices in a theatre be less than the minimum required in 2. above.
6. All theatre operators will submit an annual report of its tracking records to the Department of Justice.

This Joint Recommendations guarantees a reasonable minimum number of display units. It also establishes a flexible system whereby movie patrons with hearing impairments will be assured that their local theatre will have a CC system with an adequate number of display devices to meet the needs of the patrons of that particular theatre.

The system is dynamic. If the number of patrons who request CC display devices increases, the supply of devices will increase. If the theatre has high levels of attendance or is located in a geographic area where there are a large number of patrons who wish to use CC devices, there will be sufficient devices to meet demand. Since the number of display devices will be tied to actual demand, theatres will not have to purchase unnecessary equipment. Opportunities to utilize new technologies will be encouraged. All stakeholders will benefit.

By contrast, for the reasons stated below the scoping proposals in the NPRM not only are admittedly grounded in “guesstimates,” but also are based on flawed statistical analysis.

Limited Information in the NPRM

In the NPRM, the Department admits that it lacks information about the state of the industry and the movie-going habits of persons with impaired vision and impaired hearing. The Department states that it has not been able to locate robust data on the rate at which persons with such disabilities currently go to the movies or the rate at which persons with such disabilities will go to the movies once CC becomes widely available; that it does not know how many movie screens currently show closed captioned movies; and that according to the responses to the ANPRM, the only closed captioning system regularly used in the industry is Rear Window closed captioning and that closed captioning was only available with a limited number of films. Even when theatres have closed captioning equipment, the Department posits, closed captioned films are only shown on a limited basis.

The Department argues that although in the three years since the comment period on the ANPRM closed there has been new technology developed and the number of theatres showing closed captioning has increased, a rule is needed as movie theatres still show closed captioning in

limited venues and at intermittent times. Finally, the Department concludes that industry data showing minimal usage of CC equipment is of little value, as CC has only been available in limited circumstances, and if CC was available in a wide range of theatres for almost all movies, usage would be higher. Based on this analysis, the Department has decided that a rule is required.

Unfortunately, the Department's dearth of information regarding the current marketplace, accessibility device availability, and patron usage rates has resulted in an unnecessary and overly burdensome proposed rule. Furthermore, the Department misapplies Census Bureau data in fashioning the scope of its rule.

Population Baseline

The Department has based the scope of the rule on estimates of future movie attendance by persons with disabilities. These estimates were obtained using Census Bureau assessments⁴ of the number of hearing impaired persons in the U.S., the number of such persons whom the Census Bureau identifies as having hearing difficulties and the number of persons whom the Census Bureau identifies as having severe hearing difficulties. The Department uses the percentages provided in the Census Bureau data as the basis for its estimate of how many persons with disabilities would go to the movies and use CC equipment.

The Census Bureau classifications of the various levels of disabilities are based on responses that individuals make to Census Bureau inquiries which are very subjective. Each individual responding to the Census Bureau inquiry makes his or her own evaluation of where his or her hearing loss falls within the categories described in the Census Bureau questionnaire. There is no way of checking the responses for accuracy or uniformity. Using this data, it is not possible to define with any degree of statistical certainty the percent of hearing impaired persons who would benefit from and/or use assistive listening devices or closed captioning devices.

In the 2010 ANPRM, the Department estimated that there was a universe of 36 million Americans with some degree of hearing impairment. In the NPRM, the Department uses more recent statistics claiming that 7.6 million people have difficulty hearing (3.1%) and of those, 1.1 million people (0.5%) have a severe hearing difficulty, as these terms are defined by the Census Bureau.

Based on the estimated 36 million people with a hearing impairment, the 2010 ADA Standards require movie theatres to provide assistive listening systems in all auditoriums with a number of headsets equaling approximately 4% of the total number of seats in the theatre complex. In the NPRM, the Department concludes that it will follow similar scoping methodology as it did when it set the 4% ALD headset requirement. The Department explains that it based the proposed number of CC display devices required on the size of the population that the Department "anticipates" will use the devices and the number of seats in the theatre. Then, without further explanation, the Department concludes that the proposed number of closed captioning display devices be one-half of the number of required ALD headsets. This means that under the proposed rule, movie theatres will be required to have CC display devices equal to

⁴ See U.S. Census Bureau, U.S. Department of Commerce, P70-131, "Americans with Disabilities: 2010 Household Economic Studies" at 8 (2012). Available at <http://www.census.gov/prod/2012pubs/p70-131.pdf>.

approximately 2% of the number of seats in the theatre. This scoping requirement is excessive even using the Department's own analysis.

Assistive listening devices are designed to amplify speech and should provide a reasonable accommodation for all but the 1.1 million people who classify themselves as having severe difficulty hearing in the Census Bureau surveys. Based on the Department's own rationale, the number of CC display devices required by any rule should be based on the Census Bureau data showing 1.1 million people with severe difficulty hearing and therefore should equal approximately 1/36 of the number of ALD headsets that the Department requires for a universe of 36 million people. Even if assuming (without any substantiation) that half of the 7.6 million people who describe themselves in the Census Bureau data as having difficulty hearing would benefit from CC, the number of CC display devices required would be approximately 21% of the number of ALD headsets required.

The Department admits in the NPRM that it "cannot confidently estimate the likely number of people who would directly benefit from this proposed rule." Furthermore, the Department acknowledges that not all people with hearing or vision disabilities would want to "attend public screenings of movies even if theatres provided closed captioning and audio description simply because they do not enjoy going out to the movies – just as is the case among persons without disabilities." Data reported by the Motion Picture Association of America indicates that 68% of the American population attended a movie at least once in 2013.⁵ As the Department has acknowledged, the deaf and hard of hearing are not unlike other average members of the population in their rate of movie attendance. As with the hearing population, if 68% attend the movies once a year, only 748,000 individuals (0.31%) with a severe hearing difficulty attend the movies annually.

Not all Americans attend the movies simultaneously. Even at peak attendance times, all seats in a theatre complex are not full; theatres report average occupancy rates of 11-12%, with about a 30% occupancy rate at peak attendance time. It is therefore incorrect to assume that all those who attend movies – including all deaf and hard of hearing individuals – attend the movies at the same time.

This data shows that the Department's proposed scoping for CC devices dramatically overstates the number of patrons who will use CC devices at any given time. Additionally, usage data from movie theatres who have installed these systems show that it is rare for all devices on hand to be in use at the same time, which will be addressed in more detail below.

Nevertheless, the Department has proposed that the number of closed captioning display devices equal one-half the number of ALD headsets or approximately 2% of the number of seats in a theatre complex. There is no logical rationale for such a position.

NATO has presented the Department with hard data on numerous occasions showing the ALD headsets are rarely used by movie patrons. An analysis based on the number of ALD headsets in the existing standards simply does not meet even the lowest levels of plausibility. Compounding

⁵ Motion Picture Association of America. "Theatrical Market Statistics 2013." Available at http://www.mpa.org/wp-content/uploads/2014/03/MPAA-Theatrical-Market-Statistics-2013_032514-v2.pdf.

this with the fact that only 68% of all Americans go to the movies and the admitted unreliability of the Census Data when applied to a movie theatre setting, the result is a regulation costing hundreds of millions of dollars that is not based on the substantial evidence required by the Administrative Procedures Act for any U.S. government agency engaged in rulemaking.

The uniformity of the rule also ignores population realities. There are areas serviced by movie theatres where stocking a high device count is sensible. Adopting a flexible scoping method that takes into account different needs in different population areas by requiring theatres to scale up device numbers based on local need is more cost-effective, will assure full access based on market conditions and reasonable than applying a blanket method that will result in millions of dollars in unused technology.

CC Device Availability, Advertising, and Patron Usage Rates

Movie theatres that have installed CC and AD systems report that demand for the devices rarely, if ever, exceeds the supply, even though theatres stock substantially fewer devices than required by the NPRM. This is true even at times of peak demand. Furthermore, the Department's assertion that patron usage rates are low because of lack of availability is simply not the case, as the industry has made great strides in offering and advertising these services to patrons. NATO's Spring 2014 Accessibility survey, attached hereto, found that closed captioning technology has already been installed in 80% of the digital screens of the 24,619 screens responding to the survey. When this number of screens is taken in the context of all NATO screens, the survey shows that 61% of total NATO member screens are equipped with closed captioning and 60% are equipped with audio description. The actual numbers are likely higher as it is unlikely that every company that did not respond to the survey has not installed these technologies. In other words, the industry has exceeded the ANPRM's proposal to equip 50% of screens with CC and AD technology. Therefore, NATO rejects the Department's assertion that scoping should not be based on usage rates because the Department erroneously believes that the availability of these technologies is limited. (See Attachment A, "NATO 2014 Accessibility Survey Results.")

NATO is aware of the argument that the reason that CC display devices are not often used is because people don't know that CC is available and don't know that almost all films from the major studios come captioned. However, this is not a plausible argument as the availability of CC and AD are widely known and advertised. Theatres advertise the availability of these devices consistent with the proposed rule's requirements. The nation's 10 largest exhibitors, all NATO members, all advertise on their websites that CC and AD are available in their theatres. NATO members report that when they have installed CC and AD, it is available 24/7 assuming that the movie being played comes with CC and AD feeds. In addition to these methods of advertising, NATO member companies advertise such availability on third-party ticketing websites such as Fandango and MovieTickets.com; list their CC- and AD-enabled show times on Captionfish, a popular resource for the deaf and hard-of-hearing community; attend and sponsor disabilities conferences; notified all major deaf advocacy organizations of such availability; engaged grass roots marketing for local groups and individuals; and maintain ongoing relations with advocacy groups.

Tracked usage data shows that requests for devices rarely exceed theatre supply. In the rare instance when the number of requests exceeds the number of devices available, theatres make

arrangements to increase the number of devices available at that location, either by ordering more devices from manufacturers or by sharing devices between locations. Companies are also aware of community needs. Exhibitors in locations with high numbers of deaf patrons and/or patrons with hearing loss, such as Rochester, New York and Fredericksburg, Maryland, stock their theatres with the number of display devices required to meet demand. Theatre companies also offer open captioned shows as a courtesy to patrons in such locations as demand warrants.

NATO has collected usage rates on CC and AD equipment from a range of theatres. All of the theatres profiled below advertise the availability of assistive listening, CC, and AD devices on their websites.

Movie Theatre Closed Captioning and Audio Description Device Usage Rates

Company A

Company Profile: Small business with total screen count in 1-75 range

CC Device Baseline: One per screen

AD Device Baseline: One per screen

Tracking Period: January 1 - August 6, 2014

Percentage of digital screens equipped with CC: 100%

Percentage of digital screens equipped with AD: 100%

Percentage of digital locations with technologies: 100%

Average number of CC devices across all theatres: 14

Average number of CC devices out at peak request times: 5

Number of instances when CC requests exceeded device count: Never.

Average number of AD devices across all theatres: 14

Average number of AD devices out at peak request times: 1

Number of instances when AD requests exceeded device count: Never.

Company B

Company Profile: Regional circuit with total screen count in 300-700 range

CC Device Baseline: Half (0.5) per screen; round up to whole number

AD Device Baseline: Half (0.5) per screen; round up to whole number

Tracking Period: January 1 – December 31, 2013

Percentage of digital screens equipped with CC: 100%

Percentage of digital screens equipped with AD: 100%

Percentage of digital locations with technologies: 100%

Average number of CC devices across all theatres: 8

Average number of CC devices out at peak request times: 3

Number of instances when CC requests exceeded device counts: Never.

Average number of AD devices across all theatres: 8

Average number of AD devices out at peak request times: 1

Number of instances when AD requests exceeded device counts: Never.

Company C

Company Profile: Regional circuit with total screen count in 300-700 range

CC Device Baseline: One device per screen

AD Device Baseline: One device per screen; adjustments to meet local demands

Tracking Period: July 1, 2012 – July 31, 2014

Percentage of digital screens equipped with CC: 100%

Percentage of digital screens equipped with AD: 100%

Percentage of digital locations with technologies: 100%

Average number of CC devices across all theatres: 9

Average number of CC devices out at peak request times: 6

Number of instances when CC requests exceeded device count: In the hundreds of thousands of movie showings during the two years of the tracking period, only 16 times across all theatres were there requests for devices that exceeded the number of what was on hand. The theatres were made aware of the requests beforehand and accommodated the need by obtaining more devices from other theatres in the region, so all patrons making the request were able to use a device. Theatres with high demands have made adjustments to their stock to reflect the need. Requests from large groups are made in advance and theatres will also accommodate those groups with open captioned showings.

Average number of AD devices across all theatres: 11

Average number of AD devices out at peak request times: 2

Number of instances when AD requests exceeded device counts: Never.

Company D

Company Profile: Regional circuit with total screen count in 300-700 range

CC Device Baseline: 0.37% of total seat count; minimum six units per theatre

AD Device Baseline: Two per screen

Tracking Period: January 1 - August 6, 2014

Percentage of digital screens equipped with CC: 100%

Percentage of digital screens equipped with AD: 100%

Percentage of digital locations with technologies: 100%

Average number of CC devices across all theatres: 7

Average number of CC devices out at peak request times: 3

Number of instances when CC requests exceeded device count: Never.

Average number of AD devices across all theatres: 13

Average number of AD devices out at peak request times: 4

Number of instances when AD requests exceeded device count: Never.

Company E

Company Profile: National circuit with 2,000+ total screen count

CC Device Baseline: Average of ten per theater; minimum six units per theatre

AD Device Baseline: Eight per theatre

Tracking Period: January 1 – December 31, 2013

Percentage of digital screens equipped with CC: 100%

Percentage of digital screens equipped with AD: 100%

Percentage of digital locations with technologies: 100%

Average number of CC devices across all theatres: 10

Average number of CC devices out at peak request times: 4

Number of instances when CC requests exceeded device count: Initially, theatres were stocked with six devices each. As demand warranted, theatres increased their stock to an average of 10 devices each, with some facilities stocking even higher numbers depending on the location and population served. Since these adjustments were made, there have never been any occasions of requests exceeding devices on hand.

Average number of AD devices across all theatres: 9

Average number of AD devices out at peak request times: 2

Number of instances when AD requests exceeded device count: Never.

All of these baseline device scoping methods require far fewer CC display devices than the NPRM's proposed scoping method. They demonstrate that predicating device requirement on tracked usage rates is a reasonable scoping method, and that the NPRM's proposed scoping method arbitrarily and unnecessarily far exceeds actual demand.

Inhibiting Technological Progress

Requiring an excessive number of devices will also yield the unintended consequence of inhibiting advances in new and improved access technologies. NATO has worked proactively with technology companies to develop comfortable, user-friendly solutions; this collaboration is ongoing. NATO is concerned that the NPRM's description of available technology and cost estimates do not include all the accessibility solutions available or which could be available in the near future. The NPRM does not make mention of nor include in its cost estimates the Sony Entertainment Access Glasses, technology that works for CC, ALDs, and AD. Other technologies are in development that would make the CC and AD experience more accessible and enjoyable for all patrons. Forcing exhibitors to invest heavily in first generation technology that may become obsolete will be a waste of resources and will inhibit progress in the technology arena due to the lack of a market to sell such technologies. Exhibitors and technology companies alike will be discouraged from making investments in developing new, better technology because they will have invested excessively in existing technologies simply to comply with the NPRM standards. Also, by requiring an excessive device count, the Department will force exhibitors to purchase the least expensive – and least liked – devices. Establishing a rule intended to increase access that will in fact limit the opportunities for technological advances is a disservice to the same consumers the rule is designed to protect and inhibit exhibitors' ability to provide such improved access.

Solution

But for the efforts of NATO and its members, the solutions and access available across the United States today would not exist. NATO engaged studios, technology companies, and standards organizations to create the accessibility for individuals that are deaf, hard of hearing and have visual impairments that currently exist in over 60% of all theatres in this country. NATO took all these measures to ensure access to all interested moviegoers, regardless of the existence of any standards or regulations as proposed in the NPRM. NATO and its members had a single intent and that was to create access to first run feature films for everyone and that desire has not changed. Consistent with its past efforts, NATO and its advocacy partners have a solution that will provide CC in every digital movie auditorium and will meet the needs of all persons with a hearing impairment who might benefit from CC. This solution is not based on conjecture or hypotheticals. It is based on facts.

The NPRM makes assumptions of need based on unverifiable statistics rather than actual need based on market demands. The Department made a similar argument when the industry was mandated to install ALD headsets equaling 4% of the number of seats in any given movie theatre. The industry claimed that the number of headsets would far exceed demand. The Department argued that once people with disabilities were aware that theatres had these ALDs, they would be widely used. Twenty years have gone by, and notwithstanding the advertising of such availability, the ALD headsets are infrequently used. ALD headsets cost \$50 or less. CC display devices cost between \$400 and \$1,000. The industry cannot afford to invest millions of dollars in CC display devices that never will be used.

NATO held a series of meetings with the Alexander Graham Bell Association, Association of Late Deafened Adults, Hearing Loss Association of America, and the National Association of

the Deaf to devise a solution that meets the needs of the deaf and hard of hearing communities while also creating a reasonable compliance structure for exhibitors. As noted earlier in these comments, NATO and its advocacy partners are filing Joint Recommendations to the DOJ outlining a proposal for closed captioning device scoping. We recommend that the Final Rule include a flexible, market-responsive scoping requirement with an initial minimum number of devices. This method will ensure that theatres are adaptive to changing demographics and meeting the needs of their patrons. Consistent with the express mandates of the Americans with Disabilities Act, every company shall be entitled to an “undue burden” defense.

We strongly urge the Department to adopt this proposal.

AD Device Usage Rates

As the above usage data shows, usage rates of individual audio description devices are far lower than the number of devices currently stocked by theatres, even at peak request times. While the Department is correct that certain assistive listening headsets have a second channel for audio description, these are not universally deployed and many theatres still rely on a simpler assistive listening system.

Alternate AD Device Scoping Method

Therefore, NATO proposes an alternate scoping system for audio description devices that is tied to the number of screens in a theatre facility. NATO proposes requiring one (1) audio description devices per two (2) screens, with a minimum of two (2) devices per theatre. In the case of a fraction, the number of devices should be rounded up to the nearest whole number.

Question 11: Has the Department adequately described performance standards for individual captioning devices that deliver closed captions to patrons? How should the standards address text size that is displayed on the devices?

Answer to Question 11:

Reserved Seating

NATO supports the Department’s decision not to propose any kind of reserved seating provision for CC device users in the NPRM. The current CC systems in digital theatres provide an equally good experience anywhere in the auditorium. No regulation on this point is necessary. Further, such a restriction might limit a patron’s ability to choose whatever seat location in the auditorium that he or she prefers.

Technical Issues

The rule must recognize that CC and AD systems are part of sophisticated computer systems which occasionally may experience technical difficulties requiring outside repair expertise. Theatres that have reasonably trained staff should not be penalized for system down times provided the theatre operators take responsible steps to bring in offsite or outside expertise to restore system operations.

Standards

The movie theatre industry advocated that standards regarding CC and AD files be included in a digital cinema package so as to allow for innovation and competition among CC and AD system manufacturers. Such standards now exist.⁶ NATO and its members supported a lengthy stakeholder consultation process, including a series of testings with representatives of disability rights groups, to ensure that the physical properties of CC and AD systems would maximize patron enjoyment and ease of use. As a result the standards are reasonable and accomplish the purpose for which they were established.

Theatre operators have not had significant complaints about the performance properties of systems now in use. There is no need to address performance standard or text size. Even if the Department were to consider these issues, there is no data in the NPRM or the 2010 ANPRM relating to performance standards or type size and to address those issues would require a separate rulemaking notice.

In addition, mandated standards would cause a tremendous burden on exhibitors by requiring them to dispose of or modify the CC and AD systems they have just purchased and buy new systems. In order for new standards to be meaningful, they would have to be compatible with existing servers in digital theatres and be able to accept the digital files provided by movie studios. It took multiple industry technical committees, including representatives of equipment manufacturers, movie studios, and theatre operators, several years to devise the current standards, which allow for all digital files provided by all studios to integrate with hardware and software of all CC and AD systems from all manufacturers and servers and projections systems in all digital theatres. Developing new standards would require an initial determination of the parameters of the standards, voluntary cooperation from the studios (presently not covered by the ADA) to provide product with digital files that meet the new standards, development of new hardware and software by equipment manufacturers, and the purchase and installation of new hardware and software in theatre complexes. This would be an exorbitantly expensive, monumental, multi-year task that would delay progress in this area and is far beyond the scope of anything suggested in the 2010 ANPRM or the current NPRM. There is no basis for changing the current text size or CC and AD voluntary industry standards.

Equipment Maintenance

NATO and its advocacy partners have devised requirements for how accessibility equipment should be maintained. These requirements are contained in the Joint Recommendations to the Department filed by NATO and its advocacy partners. According to these requirements, devices must be available, clean and functional when requested by a patron. Ensuring that a device is functional means that the device operates consistent with the manufacturer's design.

Question 14: It is the Department's view that the cost of the proposed requirement for theatres to provide notice indicating which screenings will be captioned or audio-described is de minimus.

⁶ See Society of Motion Picture and Television Engineers (SMPTE) Standards ST 428-7-2010: Digital Cinema Distribution Master — Subtitle; ST 428-10-2008: D-Cinema Distribution Master — Closed Caption and Closed Subtitle; ST 429-2-2009: D-Cinema Packaging — DCP Operational Constraints; ST 429-12-2008: D-Cinema Packaging — Caption and Closed Subtitle; ST 430-10-2010: D-Cinema Operations — Auxiliary Content Synchronization Protocol; ST0430-11-2010: D-Cinema Operations — Auxiliary Resource Presentation List.

The Department requests comments on this view. Specifically, how much will it cost theatres to provide information regarding the availability of captioning and audio description for each movie and to specify whether open movie captions or closed movie captions will be provided for each particular showing and time? The Department understands that this cost may vary depending on the type of communication or advertisement, and so we request that commenters specify the type of communication or advertisement along with their cost estimate. In addition, how many times in a given year do theatres provide communications and advertisements that would trigger this proposed requirement? The Department understands that this will likely vary depending on how many screens a theatre has, and so we request theatre commenters to specify how many screens they operate in their response to this question. Because the rule would require 100 percent of movies available with captions and audio description to be shown with these accessibility features, should the Department permit theatres to indicate those movies that do not have these features rather than indicating those that have these features? Would this approach have an effect on the cost of providing notice? If so, how would it affect the cost?

Answer to Question 14:

Costs and Challenges

NATO disagrees with the Department's conclusion that the cost of providing notice in compliance with the NPRM is *de minimus*. While many theatre operators currently supplying audio description and closed captioning provide notice of said technologies on their websites, and also include the availability of assistive listening devices, requiring notice in every place that show times are displayed or recorded is estimated to cost the industry millions of dollars annually. Among the expenses theatres will face are investments in software upgrades; purchase of new signage on an ongoing basis; purchase of digital display assets; and higher costs associated with increased advertising space to accommodate more text.

Theatres that provide CC and AD availability to independent third parties which advertise showtimes, cannot control whether the third party uses, advertises, or posts this information. It should be clear that movie schedules and show time announcements controlled by third parties including (but not limited to) Fandango, MovieTickets.com, and newspapers are not the responsibility of theatre owners.

At present, movie theatres often book a film without being able to determine if CC and AD files will be included in the digital cinema package sent by the movie distributor. Theatre operators should not be penalized if they need to place advertising prior to being told if the film booked will be provided with CC and AD.

Recommendations

In the Joint Recommendations, NATO and its advocacy partners have proposed a series of marketing requirements for theatres, including posting information on the company's website; urging third-party website to include accessibility information with show times; and explanatory signage near the box office. NATO and its advocacy partners have also agreed on a list of voluntary commitments, attached hereto, from both the exhibition and advocacy communities to increase awareness of available technology. (See "Voluntary Commitments.") We urge the Department to accept these Joint Recommendations.

Question 15: How much additional time beyond the normal time movie theatres spend training staff would be needed to incorporate instruction in the operation and maintenance of the equipment for captioning or audio description? How much additional time do theatres anticipate spending on assisting patrons in using the captioning and audio description devices? How should the Department estimate the value of the additional time theatre personnel would spend on assisting patrons in using the captioning and audio description devices? Would that additional cost be borne by the theatres, and if so, how?

Answer to Question 15:

In the Joint Recommendations, NATO and its advocacy partners have proposed a number of requirements for employee training. These proposals include requirements that: (1) theatre operators develop reasonable staff training programs and equipment maintenance programs to meet the needs of patrons and the requirements of any Department rule; (2) that all staff be trained as to the availability of the technology; (3) that a staff member who is knowledgeable regarding system operation and trouble-shooting be on-site at all times; and (4) that staff training to be reinforced on a regular basis.

The time, value and cost for training staff and assisting patrons regarding closed captioning and audio description systems will vary from company to company. More than half of the screens on the U.S. already have these systems. Each company makes its own decision regarding cost allocation.

Question 16: The Department invites comment on the Initial RA's methodology, cost assumptions, and cost estimates, including the specific costs of purchasing, installing and replacing captioning and audio description equipment, and the costs of complying with the training and notice requirements of the rule. The Department is particularly interested in receiving comments about the frequency with which captioning and audio description devices need to be replaced. The Department is also interested in estimates of how much time it would take for theatres to acquire the equipment needed to comply with this rule.

Answer to Question 16:

NATO is concerned that the Department's Initial RA methodology, cost assumptions, and cost estimates do not reflect realities of theatre operations, and thus may underestimate the true costs of compliance with the proposed rule. Data sought by the Department is presented below.

Seat Counts

A survey of NATO member companies, including single-screen theatres, small businesses operating fewer than five locations, mid-size regional chains, and national circuits, showed the Department's projected average number of seats per theatre type were well below what is in the field.

Table 1: Seat Count Averages

Theatre Type	NPRM Average Number of Seats Per Theatre	NATO Survey-Based Average Number of Seats Per Theatre	Difference
Single Screen	175	462	+287
Miniplex	600	876	+276
Multiplex	1,980	2,115	+135
Megaplex	3,150	3,420	+270

The difference is most pronounced between the Department’s assumed average for single-screen theatres. In fact, single-screen theatres are often historic movie theatres with many hundreds of seats that were built when movie theatres were the sole form of entertainment for the nearby population. A survey of NATO’s single-screen operators found that seat counts at those theatres can range as high as 300, 600, 900, and even 1420 seats per theatre. These exhibitors reported that their auditoriums are rarely filled to capacity. As proposed, the Department’s scoping for individual captioning devices would be an undue burden on exhibitors who are already struggling to make a profit. Moreover, as the chart above demonstrates, the Department’s cost estimates for all types of theatre complexes are understated.

Screen Counts

NATO’s member company survey showed that the Department’s assumed screen count averages were slightly lower than reported averages. Miniplexes have on average 5 screens and multiplexes have on average 12 screens. Megaplexes reported 18 average screens, consistent with the Department’s assumption.

Table 2: Adjusted Seat and Screen Count Averages

Theatre Type	NPRM Average Number of Screens Per Theatre	NPRM Average Number of Seats Per Theatre	NATO Survey-Based Average Number of Screens Per Theatre	NATO Survey-Based Average Number of Seats Per Theatre
Single Screen	1	175	1	462
Miniplex	4	600	5	876
Multiplex	11	1,980	12	2,115
Megaplex	18	3,150	18	3,420

Average Initial Cost

NATO believes the Department’s projected average initial costs to be well below actual costs. In addition to the seat count miscalculations described above, this is also due to the Department’s omission of Sony Entertainment Access Glasses from the NPRM. The Sony products are discussed in the Initial RA but are given no mention whatsoever in the NPRM. At the time the

NPRM and initial RA were written, the Department considered the Sony products to be “very new and expensive” and therefore did not include them in the main initial capital cost estimations, resulting in lower assumed average initial costs. The Sony glasses are the captioning display device featured by Regal Cinemas, the largest U.S. theatre operating with over 7,000 screens and therefore must be considered in any cost analysis. Additionally, this omission does not reflect the strides that theatres have made to install the most up-to-date, advanced, and user-friendly equipment.

Below please find device costs furnished to NATO by the three manufacturers listed below.

Table 3: Transmitter and Device Costs

Technology	CC/AD Transmitter / Software	CC Display Unit	AD Receiver	AD Programming Station
Doremi (with Doremi server)	\$822*	\$453	\$121	\$615*****
Doremi (without Doremi server)	\$906**	\$453	\$121	\$615
USL	\$1371**	\$479***	\$69	--
Sony	\$500**	\$1250****	\$300	--

*The \$822 figure represents a bundled set of CC and AD transmitters, which are physically separate units and can also be bought separately from Doremi for \$561 and \$539 respectively. Because exhibitors will be required to install both systems in their auditoriums, NATO assumes that exhibitors will be buying the transmitters as a bundled set and used that figure (\$822) when calculating the total initial costs below.

**One transmitter works for both CC and AD technologies.

***This figure is the average of USL’s two CC devices – a cupholder unit (\$443) and glasses (\$514).

****The Sony Glasses require a glasses unit and a receiver unit. This figure represents the two components of the system: \$950 for glasses and \$300 for a receiver.

*****The Doremi AD system – Fidelio – also requires a programming station for AD devices. One per complex is generally sufficient. The USL and Sony systems do not come with a programming station.

Below please find NATO’s assessment of the actual total initial cost per theatre type, compared to the Department’s average initial costs published in the NPRM. The transmitter and device requirements are based NATO’s adjusted screen and seat count averages (see Table 2 above). The per-unit costs are based on the transmitter and device costs furnished to NATO by the manufacturers (see Table 3 above).

Table 4: Actual Average Initial Costs

Type of Theatre	CC/AD Transmitter (1 per screen)	CC Display Units	AD Receivers	NATO Average	NPRM Average	Difference
Single Screen	1	10	2	\$8,101	\$3,198	+\$4,903
Miniplex	5	16	5	\$16,111	\$10,586	+\$5,525
Multiplex	12	29	12	\$32,042	\$26,839	+\$5,203
Megaplex	18	36	18	\$42,968	\$38,547	+\$4,421

Replacement Schedule and Ongoing Maintenance Costs

Theatre operators report that between 2.5-15% of individual devices must be replaced annually, due to mishandling, breakage, and failure by patrons to return the devices before leaving the theatre complex. Depending on the system, theatres must also replace batteries used in individual devices. Ongoing maintenance also includes periodic system testing, upgrading software, and training new employees. These costs are substantial.

Other Costs

The above table estimating initial costs does not include costs of man hours to evaluate, purchase, and install CC and AD systems. Exhibitors have spent hundreds of hours to assess and install the systems in their complexes. Many theatres do not employ in-house individuals who can install the systems, requiring them to spend additional funds on third-party installers.

Question 17: The Department invites comment on methods and data for monetizing or quantifying the societal benefits of the proposed regulation, including benefits to persons who are deaf or hard of hearing or blind or have low vision, as well as to other members of the movie-going public or other entities. For example, the Department invites comments on methods and data for estimating the number of people with vision or hearing disabilities who would benefit from this rule, and addressing the challenges noted above in developing such an estimate, as well as comments on methods and data that could be used to estimate the value of the different types of benefits noted above. The Department also invites comments on its qualitative discussion of the benefits of this rule, which include equity, human dignity, and fairness.

Answer to Question 17:

It is impossible to put a dollar figure on the societal benefits of the proposed rule. Theatres have chosen to install these systems not just to increase ticket sales, but to create an environment of inclusiveness and ensure that every person desiring to see a movie on the silver screen can do so.

Question 13: The Department invites comments on the additional time it will take and other possible costs movie theatres would incur to determine whether compliance with the rule would

constitute an undue burden. What kinds of costs are involved? How much time would a theatre spend determining how to comply with the rule; gathering, compiling, and reviewing financial records; and estimating the cost of compliance? Would small theatres have professionals such as accountants or lawyers review their financial records? What information should the Department use to estimate the per hour cost of the time movie theatres spend undertaking these activities? How might the Department develop an estimate of the average time and cost required to determine whether full compliance would constitute an undue burden? To what extent would this rule increase movie theatres' reliance on the undue burden analysis compared to the status quo? What characteristics of small theatres would make it more likely that it would be an undue burden to comply with the rule? Are there empirical studies or other credible information available for estimating the time and cost for a theatre to make a legitimate determination that compliance would constitute an undue burden? The Department is interested in comments in response to these questions from the public in general, but particularly from small movie theatre owners and operators and from other small businesses covered by title III of the ADA with experience in determining whether it is an undue burden to meet their effective communication obligation.

Question 18a: Numbers of Small Businesses

The Department is interested in receiving comments and data on all of the assumptions regarding the numbers of small entities impacted by this regulation, particularly on the numbers of small entities that have digital or analog screens (or both), the number of screens in each theatre, the type of movies shown at these theatres (first-run commercial films, independent films, etc.), and the type of captioning equipment and devices these theatres already have. The Department is particularly interested in data regarding small analog theatres, such as the availability of analog film prints, the availability of movies with captions and audio description (in both analog and digital formats), the rate at which small theatres are converting to digital cinema, and the economic viability of both small analog and small digital theatres. The Department would also be interested in data on the number of analog and digital theatres by theatre type and annual receipts. Finally, the Department is interested in whether and to what extent small analog and small digital theatres are participating in certain cost-sharing programs to help convert theatres to digital technology, such as a virtual print fee (VPF) program. If they are not participating in such cost-sharing programs, why not? (See Question 1 for additional questions about analog theatres).

Question 18b: Numbers of Small Nonprofit Entities

The Department seeks comment and data on small nonprofits that operate theatres that would be covered by this proposed rule, particularly on the number of small entities in this category, and the potential costs and economic impacts of the proposed rule. Should the Department adopt a different compliance schedule for these theatres?

Question 19: Small Business Compliance Costs

The Department seeks comment and data on the small business compliance cost estimates, including the costs associated with procuring and maintaining digital and analog equipment, the availability of this equipment, estimates of the average cost of this proposed rule by establishment and firm, and the ratio of average costs of this proposed rule to firm receipts. The Department is interested in comment on whether small theatres will incur higher prices in the

purchase and installation of this equipment due to the lower volume needed. The Department also seeks public comment on its proposed scoping for individual captioning devices. Should the Department consider approaching scoping differently for small theatres? How so and why? (Please see Question 10 for additional questions about scoping for captioning devices). How many devices capable of transmitting audio description to individuals should each movie theatre have on hand for use by patrons who are blind or have low vision? (Please see Question 12 for additional questions about scoping for audio description). Do small theatres face any additional costs not already included in these cost estimates? The Department seeks comment and data on what, if any, particular requirement of this rule would cause a small business to claim that it is an undue burden to comply with the requirements of this proposed rule.

Question 20: Other Costs for Small Businesses

The Department invites comment on the estimation of operation and maintenance costs for this proposed rule, which include administrative costs to keep track of equipment, staff training and availability (see Question 15 for additional questions related to staff training), maintenance and replacement of captioning and audio description hardware and individual devices, and the notice requirement (see Questions 14 and 16 for additional questions about the notice requirement). The Department is particularly interested in receiving comments about the costs and frequency of replacing captioning and audio description equipment. Are there other compliance costs, such as regulatory familiarization, that should be included in this small business analysis?

Question 21a: Significant Alternatives for Small Analog Theatres under the RFA

Is the four-year compliance date in Option 1 reasonable for those screens that will remain analog? If not, why not? Should the Department adopt Option 2 and defer requiring theatres with analog screens to comply with the specific requirements of this rule? (See Questions 6 and 8).

Question 21b: Significant Alternatives for Small Digital Theatres under the RFA

Is the proposed six-month compliance date for digital screens a reasonable timeframe to comply with the rule? Is six months enough time to order, install, and gain familiarity with the necessary equipment; train staff so that they can meaningfully assist patrons; and meet the notice requirement of the proposed rule? If the proposed six-month date is not reasonable, what should the compliance date be and why? (See Question 7).

Question 21c: Other Significant Alternatives for Small Theatres under the RFA

The Department invites comment on ways to tailor this regulation to reduce unnecessary regulatory burdens on small businesses.[58] For example: Should the Department have a different compliance schedule for digital or analog theatres that have annual receipts below a certain threshold? If so, what should the financial threshold be? (See Question 6). The Department is also interested in receiving comment and data on the use of the undue burden defense by small businesses.

Answer to Question 13 and 18-21:

NATO's membership represents 80% of the screens in the United States. NATO estimates that between 95-97% of its membership are small business theatres.

For more on the status of analog and digital cinema, please refer to the answer to Questions 1A-C.

For more on the compliance window, please refer to the answer to Questions 6, 7, and 8.

For more on device scoping, please refer to the answer to Questions 10 and 12.

For more on the costs estimated with compliance, please refer to the answer to Question 16.

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