



PUBLIC NOTICE

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DA 06-1483

Released: July 20, 2006

REMINDER TO VIDEO PROGRAMMING DISTRIBUTORS OF OBLIGATION TO MAKE EMERGENCY INFORMATION ACCESSIBLE TO PERSONS WITH HEARING OR VISION DISABILITIES

The Commission issues this Public Notice to remind video programming distributors – including broadcasters, cable operators, and satellite television services – of their obligation to make emergency information accessible to persons with hearing and vision disabilities.¹ This Public Notice also provides information for consumers regarding the process for filing complaints alleging violations of this requirement.

Obligation to Make Emergency Information Accessible

In the case of persons who are deaf or hard of hearing, Commission rules require that emergency information provided in the audio portion of the programming must be made accessible using closed captioning *or* other methods of visual presentation, such as open captioning, crawls, or scrolls that appear on the screen.² Emergency information provided by these means should not block any closed captioning, and, closed captioning should not block any emergency information provided by crawls, scrolls, or other visual means.³ This rule regarding access to emergency information for persons with hearing disabilities became effective on August 29, 2000.⁴

¹ See 47 C.F.R. § 79.2 (titled “Accessibility of programming providing emergency information”). Because of the importance of this issue, we have issued several similar Public Notices in the past. See Public Notice, DA 01-1930, 16 FCC Rcd. 15348 (Aug. 13, 2001); Public Notice, DA 02-1852, 17 FCC Rcd. 14614 (July 31, 2002); Public Notice, DA 03-2361, 18 FCC Rcd. 14670 (July 18, 2003); Public Notice, DA 04-1595, 19 FCC Rcd. 9882 (May 24, 2004); Public Notice, DA 05-688, 20 FCC Rcd. 5918 (Mar. 17, 2005). See also *Reminder to Video Programming Distributors of Need to Make Emergency Information Regarding Hurricane Katrina Evacuation and Relief Efforts Accessible to Persons with Hearing or Vision Disabilities*, Public Notice, DA 05-2438, 2005 WL 2206068 (Sept. 9, 2005).

² See 47 C.F.R. § 79.2(b)(1)(i).

³ See 47 C.F.R. § 79.2(b)(3)(i).

⁴ See *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Accessibility of Emergency Programming*, Second Report and Order, MM Docket No. 95-176, FCC 00-136, 15 FCC Rcd 6615 (April 14, 2000) (2000 Order); see also *Accessibility of Emergency Programming Rule Requiring OMB Approval Effective as of August 29, 2000*, Public Notice, DA 00-1996, 15 FCC Rcd 15968 (Aug. 31, 2000).

This same information must also be provided in a manner that is accessible to persons who are blind or have low vision. First, emergency information that is provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming must be made accessible.⁵ The Commission envisions that distributors will aurally describe the emergency information in the main audio as part of their ordinary operations; this is similar to providing “open” video description.⁶ Second, if the emergency information is being provided in the video portion of programming that is *not* a regularly scheduled newscast (*e.g.*, the programmer provides the emergency information through “crawling” or “scrolling” during regular programming) or a newscast that interrupts regular programming, the information must be accompanied by an aural tone.⁷ This tone is intended to alert persons with vision disabilities that the video programming distributor is providing emergency information, and therefore such persons should tune to another source, such as a radio, for more information. This rule regarding access to emergency information for persons with vision disabilities became effective February 2, 2001.⁸

A local broadcast licensee is responsible for complying with Section 79.2 regardless of the delivery technology used to deliver its signals to consumers. The “pass through” obligation generally imposed on video programming distributors under the closed captioning rules set forth in Section 79.1⁹ also applies to emergency information subject to Section 79.2. All video programming distributors are required to pass through any captions that they receive from the originating source and are responsible for maintaining their equipment in working order to ensure the accurate transmission of the closed captions.¹⁰ This requirement applies to closed captioning for digital and analog programming.

Emergencies and Emergency Information

Examples of the types of emergencies about which “emergency information” may be broadcast include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, terrorism-related events, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.¹¹ *The list of emergencies is not intended to be exhaustive.* For example, the 2002 sniper situation in the Washington, DC area was an emergency event during which “emergency information” may have been broadcast.¹²

⁵ See 47 C.F.R. § 79.2(b)(1)(ii).

⁶ See *Implementation of Video Description of Video Programming*, Report and Order, MM Docket No. 99-339, FCC 00-258, 15 FCC Rcd. 15230 at para. 49 (Aug. 7, 2000).

⁷ See 47 C.F.R. § 79.2(b)(1)(iii).

⁸ See *Amended Emergency Information Rule effective as of February 1, 2001*, Public Notice, DA 01-799, 16 FCC Rcd 7194 (Mar. 30, 2001).

⁹ See 47 C.F.R. § 79.1(c).

¹⁰ See *2000 Order*, 15 FCC Rcd at 6622, n.48; see also *Closed Captioning and Video Description of Video Programming*, Report and Order, MM Docket No. 95-176, FCC 97-279, 13 FCC Rcd. 3272 at paras. 211-212 (Aug. 22, 1997).

¹¹ See 47 C.F.R. § 79.2 (a)(2) (setting forth examples of types of emergencies).

¹² See Letter from Colleen Heitkamp, FCC to Fred Ryan, WJLA-TV, dated April 22, 2004; Letter from Colleen Heitkamp, FCC to David Fleming, Gannett/WUSA-TV, dated April 22, 2004; Letter from Colleen Heitkamp, FCC to Molly Pauker, Fox Television Stations, Inc., dated April 22, 2004; Letter from Colleen Heitkamp, FCC to F. William LeBeau, WRC-TV, dated April 22, 2004.

The question of whether a particular incident or event is an “emergency” under this rule is not the same as whether particular information broadcast about the event is “emergency information.” “Emergency information” is information about a current emergency that is intended to further the protection of life, health, safety, or property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.¹³

This may include, for example, information on road closures and evacuations, location of emergency shelters, and advisories to viewers on possible health concerns from air pollution caused by wildfires.¹⁴

The rule applies to emergency information that is primarily intended for distribution to an audience in the geographic area in which the emergency is occurring. However we note that there are times when the airing of emergency information pertaining to a matter of national importance will also be of local concern, and therefore should be made accessible. For example, this could include providing information to non-impacted areas sheltering individuals displaced by a large-scale disaster.

In sum, to the extent that video programming distributors – including broadcasters, cable operators, and satellite television services – air “emergency information,” that “emergency information” must be made accessible according to the Commission’s access to emergency information rule (Section 79.2). Unlike the requirement that most video programming be closed captioned pursuant to Section 79.1 of the Commission’s rules,¹⁵ *there are no exemptions for complying with Section 79.2 (the access to emergency information rule).*¹⁶

Impact of 100% Closed Captioning Benchmark on Provision of Section 79.2 Information

Given the transition to 100% closed captioning, which occurred on January 1, 2006,¹⁷ television stations that are not permitted by Commission rules to count captions created using the electronic newsroom technique (ENT)¹⁸ are now required to close caption all new non-exempt programming, including

¹³ See 47 C.F.R. § 79.2(a)(2); *see also* Note to § 79.2(a)(2): “Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.”

¹⁴ See, e.g., Channel 51 of San Diego, Inc., Licensee of KUSI-TV, San Diego, CA, *Notice of Apparent Liability of Forfeiture*, DA 05-456 (Enforcement Bureau, rel. Feb. 23, 2005); McGraw-Hill Broadcasting Company, Inc., Licensee of KGTV, San Diego, CA, *Notice of Apparent Liability of Forfeiture*, DA 05-457 (Enforcement Bureau, rel. Feb. 23, 2005); Midwest Television, Inc., Licensee of KFMB-TV, San Diego, CA, *Notice of Apparent Liability of Forfeiture*, DA 05-455 (Enforcement Bureau, rel. Feb. 23, 2005).

¹⁵ See 47 C.F.R. § 79.1.

¹⁶ See *2000 Order*, 15 FCC Rcd at 6622-6623, para. 12.

¹⁷ See 47 C.F.R. § 79.1(b)(iv).

¹⁸ See 47 C.F.R. § 79.1(e)(3). The relevant text of that subsection reads: “Live programming or repeats of programming originally transmitted live that are captioned using the so-called ‘electronic newsroom technique’ will be considered captioned, except that effective January 1, 2000, and thereafter, the major national broadcast television networks (*i.e.*, ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 television markets as defined by Nielsen’s Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all homes subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules.”

breaking news and emergency alerts. In other words, for these non-ENT stations, critical details of emergency information *must be closed captioned*.¹⁹

Entities that are permitted to and are using captions created using ENT for their live programming for determining compliance with Section 79.1²⁰ are reminded that if the ENT method does not automatically caption non-scripted news, the provider must either caption or make the emergency information accessible by some form of visual presentation as required by Section 79.2 (e.g., scrolls or crawls).²¹ Lastly, a distributor in a market that is permitted to use ENT, but does not use ENT for its live programming, must caption its emergency information. Providing emergency information in a format permissible under Section 79.2 is not sufficient in this case; rather, closed captioning is required pursuant to Section 79.1.

Consumer Complaints and Enforcement

The Commission continues to receive complaints from individuals alleging violations of Section 79.2. The number of these complaints typically increases significantly following a major event of an emergency nature, especially weather-related emergencies. Some consumers also report that visual emergency information (e.g., emergency school closing information) was blocked by other information on the screen. The Commission has taken several enforcement actions related to violations of this rule.²²

Broadcasts of emergency information lacking visual displays and video descriptions deny persons with hearing and vision disabilities access to vital, potentially life-saving, information. All distributors of video programming that elect to provide emergency information about a current emergency must make that information accessible to persons who are deaf or hard of hearing, or blind or have low vision, in accordance with 47 C.F.R. § 79.2.

The Commission will continue to closely monitor complaints alleging violations of the access to emergency information rule, and will review for possible enforcement action.

If you have a complaint, you can first contact the video programming distributor, although you are not required to do so. You can also complain directly to the FCC. Your complaint should include:

- The name of the video programming distributor (e.g. broadcast station, cable company, or DBS provider) against whom the complaint is alleged;
- The date and time of the omission of emergency information; and
- The type of emergency.

You may contact the FCC by letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, Braille, or any other method that would best accommodate your disability. Send your complaint to:

¹⁹ The Commission's rules permit the use of "[o]pen captioning or subtitles in the language of the target audience" in lieu of closed captioning. 47 C.F.R. § 79.1(e)(2).

²⁰ See 47 C.F.R. § 79.1(e)(3).

²¹ See 2000 Order, 15 FCC Rcd at 6623-24, para. 16.

²² See, e.g., Channel 51 of San Diego, Inc., Licensee of KUSI-TV, San Diego, CA, *Notice of Apparent Liability of Forfeiture*, DA 05-456 (Enforcement Bureau, rel. Feb. 23, 2005); McGraw-Hill Broadcasting Company, Inc., Licensee of KGTV, San Diego, CA, *Notice of Apparent Liability of Forfeiture*, DA 05-457 (Enforcement Bureau, rel. Feb. 23, 2005); Midwest Television, Inc., Licensee of KFMB-TV, San Diego, CA, *Notice of Apparent Liability of Forfeiture*, DA 05-455 (Enforcement Bureau, rel. Feb. 23, 2005).

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Attached is the text of the rule itself, 47 C.F.R. § 79.2. This rule and related Factsheets summarizing the closed captioning and access to emergency information rules are also available at the FCC Consumer & Governmental Affairs Bureau's websites, <http://www.fcc.gov/cgb>, <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html>, and <http://www.fcc.gov/cgb/consumerfacts/emergencyvideo.html>.

The full texts of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. Copies may be purchased by contacting the FCC's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington D.C. 20554, telephone 1-800-378-3160, facsimile 202-488-5563, or via e-mail www.bcpweb.com.

To request this *Public Notice* or the rule in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Consumer & Governmental Affairs Bureau Contact: Traci Randolph, (202) 418-0569 (voice); (202) 418-0537 (TTY); e-mail traci.randolph@fcc.gov.

- FCC -

ATTACHMENT

47 C.F.R. § 79.2

§ 79.2 Accessibility of programming providing emergency information.

(a) Definitions.

(1) For purposes of this section, the definitions in Sections 79.1 and 79.3 apply.

(2) Emergency information. Information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.

Note to paragraph (a)(2): Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

(b) Requirements for Accessibility of Programming Providing Emergency Information.

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided in the audio portion of the programming must be made accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in Section 79.1 of this part.

(ii) Emergency information that is provided in the video portion of a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to persons with visual disabilities; and

(iii) Emergency Information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.

(2) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(3) Video programming distributors must ensure that:

(i) Emergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning; and

(ii) Emergency information should not block any video description and any video description provided should not block any emergency information provided by means other than video description.

(c) Complaint Procedures.

A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.