



Federal Communications Commission
Washington, D.C. 20554

September 16, 2013

DA 13-1907

Small Entity Compliance Guide

Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

MB Docket Nos. 12-107, 11-43; FCC 13-45

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
fccinfo@fcc.gov

OBJECTIVES OF THE PROCEEDING

In the *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket Nos. 12-107, 11-43, the Commission sought to fulfill its responsibilities under Sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) by:

- Adopting rules requiring the providers and distributors of video programming to make emergency information accessible to individuals who are blind or visually impaired; and
- Adopting rules requiring apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make available video description and accessible emergency information.

The rules adopted will better enable individuals who are blind or visually impaired to access televised emergency information and video description services, as Congress intended.

COMPLIANCE REQUIREMENTS

1. **Background Information: Definitions**

- Emergency information is 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. 47 C.F.R. § 79.2(a)(2).
 - Examples of emergencies: 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.
 - Examples of critical details: specific details about areas that will be affected by the emergency, evacuation orders, areas to be evacuated, 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.
- A secondary audio stream is an audio channel, other than the main program audio channel, that is typically used for foreign language audio and video description.
- Video description is the insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue. 47 C.F.R. § 79.3(a)(3).
- Video programming is programming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media. 47 C.F.R. §§ 79.1(a)(1), 79.2(a)(1), 79.3(a)(4).
- A video programming distributor (VPD) is any television broadcast station licensed by the Commission, any multichannel video programming distributor (MVPD), and any other distributor of video programming for residential reception that delivers such programming

directly to the home and is subject to the jurisdiction of the Commission. 47 C.F.R. §§ 79.1(a)(2), 79.2(a)(1), 79.3(a)(5).

- A video programming provider (VPP) is any VPD and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming. A VPP includes a program owner. 47 C.F.R. §§ 79.1(a)(3), 79.2(a)(1), 79.3(a)(2).
2. **Obligations of Video Programming Distributors and Providers Under Section 202 of the CVAA**
- General requirement: Section 202 of the CVAA required the Commission to adopt rules requiring the providers, distributors, and owners of video programming to convey emergency information in a manner accessible to individuals who are blind or visually impaired. 47 U.S.C. § 613(g)(2).
 - Rules for emergency information provided during video programming
 - Emergency information provided visually during *newscast* programming (47 C.F.R. § 79.2(b)(2)(i)):
 - Must be described aurally in the main program audio, as previously required.
 - Emergency information provided visually during *non-newscast* programming (47 C.F.R. § 79.2(b)(2)(ii)):
 - Must be provided aurally on a secondary audio stream; and
 - Must be preceded by an aural tone on both the main program audio and on the secondary audio stream.
 - Requirements for emergency information provided aurally on a secondary audio stream
 - Emergency information provided aurally on a secondary audio stream must be conveyed in full at least twice. 47 C.F.R. § 79.2(b)(2)(ii).
 - Covered entities are permitted, but not required, to use text-to-speech (TTS) technologies to provide emergency information aurally on a secondary audio stream. TTS technologies automatically generate an audio version of a textual message. Emergency information provided through TTS:
 - Must be intelligible; and
 - Must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency (*e.g.*, names of shelters, school districts, streets, districts, and proper names). 47 C.F.R. § 79.2(b)(2)(ii).
 - Aural emergency information does not need to be a verbatim translation of the text, but it must accurately and effectively communicate the critical details about the emergency and how to respond to it to individuals who are blind or visually impaired.

- This standard applies to both textual emergency information and visual but non-textual emergency information (*e.g.*, maps or other graphic displays).
 - Aural emergency information must supersede all other content provided on a secondary audio stream, including video description, foreign language translation, or duplication of the main program audio. 47 C.F.R. § 79.2(b)(5).
 - With regard to information on school closings and school bus schedule changes related to emergencies, covered entities may provide this information aurally on the secondary audio stream at the conclusion of any video-described programming. If they do so, they must air a brief audio message on the secondary audio stream at the start of the crawl containing visual school closing/bus schedule information indicating that they will be providing this information at the conclusion of video-described programming.
 - We leave it to the good faith judgment of covered entities to decide whether school closings and school bus schedule changes result from a situation that is a current emergency.
 - Covered entities are encouraged to assist consumers with accessing emergency information on a secondary audio stream by providing a point of contact, as well as other information about how to seek assistance, on their websites and in other informational materials distributed to the public.
- Obligations of video programming distributors (VPDs) and video programming providers (VPPs)
 - The VPD or VPP that creates the visual emergency information content and adds it to the programming must provide an aural representation of the information on a secondary audio stream, accompanied by an aural tone. 47 C.F.R. § 79.2(b)(2)(ii).
 - VPDs must ensure that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers. 47 C.F.R. § 79.2(b)(2)(ii).
 - Both VPDs and VPPs are responsible for ensuring that emergency information supersedes any other programming on a secondary audio channel, with each responsible only for its own acts or omissions. 47 C.F.R. § 79.2(b)(5).
- Compliance deadline
 - Covered entities must provide an aural presentation of visual emergency information on a secondary audio stream by May 26, 2015. 47 C.F.R. § 79.2(b)(2)(ii).
 - DBS providers with inadequate spot beam capacity in local markets can file a request for waiver.

3. Procedures for Complaints Alleging Violation of Emergency Information Rules

- Complaints may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, 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. 47 C.F.R. § 79.2(c).

- The complaint should include:
 - the name of the VPD or the VPP 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 VPD or the VPP of the complaint, and the VPD or the VPP must reply to the complaint within 30 days. 47 C.F.R. § 79.2(c)

4. **Devices Covered by Apparatus Rules, Exemptions, and Exceptions**

- All devices that are designed to receive, play back, or record video programming provided by broadcasters and MVPDs must comply with the emergency information and video description apparatus requirements. 47 C.F.R. §§ 79.105, 79.106.
 - Devices are considered “designed to” receive, play back, or record video programming if they are *capable of* receiving, playing back, or recording video programming.
 - This includes devices with screens of any size, as well as those devices that do not have a screen at all, such as set-top boxes, game consoles, or personal computers. Covered devices include traditional television receivers (including those that use a screen less than 13 inches in size), DVD and Blu-ray players, devices capable of recording video programming, and mobile digital television (mobile DTV) devices.
 - This does *not* include mobile devices that do not have receivers used to access television broadcast or MVPD services.
- The following categories of devices are exempted from the apparatus rules (47 C.F.R. §§ 79.105(b)(1)-(2)):
 - display-only monitors with no playback capability; and
 - professional and commercial equipment not generally used by the public.
- Where manufacturers believe that it is inappropriate or impossible for their devices to comply with the emergency information and video description apparatus requirements, they may make use of one or more of the following exceptions:
 - Receive and playback devices, but not recording devices, are not required to comply with the apparatus requirements if it is *not technically feasible* to do so. 47 C.F.R. § 79.105(a). For it not to be technically feasible, it must be more than merely “difficult” to comply. In other words, it must not be physically or technically possible to change the design of the device in order to include the required capabilities.

- Receive and playback devices with screens less than 13 inches in size and recording devices need only comply with the apparatus requirements if doing so is *achievable*. 47 C.F.R. §§ 79.105(b)(3); 79.106(a). Achievability is defined as “with reasonable effort or expense,” and consists of a four factor test. Manufacturers may show, for the specific device, that it is not achievable to comply with the apparatus requirements as a result of:
 - the nature and cost of the steps needed to meet the apparatus requirements;
 - the technical and economic impact on the operations of the manufacturer or provider;
 - the type of operations of the manufacturer or provider; and
 - the extent to which the service provider or manufacturer offers other accessible devices at differing price points.
- Receive and playback devices, but not recording devices, may request a *purpose-based waiver* of the apparatus rules (47 C.F.R. § 79.105(b)(4)), stating that while their device is capable of receiving video programming, either:
 - The device is a single-purpose device primarily designed for a purpose other than receiving or playing back video programming, and access to video programming on the device is merely incidental; or
 - The device is a multi-purpose device, but receiving or playing back video programming is not one of the uses which comprise the device’s “essential utility.”
- Manufacturers are not required to petition the Commission for a determination that it is *not technically feasible* or *achievable* to comply with the apparatus requirements before manufacturing or importing their devices, though they may do so, but are permitted to assert a “lack of technical feasibility” or a “lack of achievability” as a defense to a complaint. However, manufacturers seeking a waiver under one of the two *purpose-based waiver* provisions must do so prior to the sale of their devices, as the purpose-based waivers are not available as defenses to a complaint without having first obtained a waiver from the Commission.

5. **Obligations of Covered Devices Under Section 203 of the CVAA**

- General requirement: Section 203 of the CVAA required the Commission to adopt rules requiring certain devices on which consumers receive, play back, or record video programming to make available accessible emergency information and video description services. 47 U.S.C. §§ 303(u)(1), 303(z)(1).
- Receive and playback devices are required to decode and make available secondary audio streams, because such streams are currently used to provide video description services and will now be used to make emergency information accessible. 47 C.F.R. § 79.105(a).

- Recording devices must enable the presentation or the pass-through of secondary audio streams. 47 C.F.R. § 79.106(b). This means that recording devices must store the secondary audio stream along with the recorded video, such that a consumer may switch between the main program audio and the secondary audio stream when viewing recorded video programming.
- Covered devices are permitted, but not required, to contain TTS capability.
- Covered entities are encouraged to assist consumers with accessing video description and emergency information on a secondary audio stream by providing a point of contact, as well as other information about how to seek assistance, on their websites and in other informational materials distributed to the public.
- Compliance deadline: The deadline for manufacturers to comply with our rules for the devices they manufacture is May 26, 2015. 47 C.F.R. §§ 79.105(a), 79.106(a). The deadline applies only to the date of manufacture (*i.e.*, there is no restriction on importing, shipping, or sale of devices manufactured before the deadline). Note 2 to 47 C.F.R. § 79.105(a); Note 2 to 47 C.F.R. § 79.106(a).
- Alternate means of compliance
 - An entity may meet the emergency information and video description apparatus requirements of the CVAA through alternate means than those prescribed by Commission regulations.
 - Should an entity seek to use an “alternate means” to comply, it may request a Commission determination that the proposed alternate means satisfies the statutory requirements.

6. **Procedures for Complaints Alleging Violation of Apparatus Rules**

- A complaint alleging a violation of the Section 203 apparatus requirements may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission’s online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), e-mail, or some other method that would best accommodate the complainant’s disability. If a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer.
- Complaints alleging a violation of the apparatus rules should include:
 - the name, postal address, and other contact information, such as telephone number or email address, of the complainant;
 - the name and contact information, such as postal address, of the apparatus manufacturer or provider;
 - information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information;

- the date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information;
 - a statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules;
 - the specific relief or satisfaction sought by the complainant; and
 - the complainant's preferred format or method of response to the complaint.
- The Commission will forward complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved.
 - The Commission may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or to adjudicate potential violations of Commission rules.

RECORDKEEPING

- **For VPDs and VPPs.** As detailed above, the *Report and Order* adopts certain rules that would require VPDs and/or VPPs to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* provides that parties may petition for waiver of the emergency information requirements for good cause pursuant to Section 1.3 of the Commission's rules. DBS operators may petition for a waiver of the emergency information requirements pursuant to Section 1.3 of the Commission's rules if they have insufficient spot beam capacity. The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information rules.
- **For Manufacturers of Devices.** As detailed above, the *Report and Order* adopts certain rules that would require manufacturers of devices to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* permits parties to raise achievability or technical infeasibility as a defense to a complaint or, alternatively, to file a request for a ruling under Section 1.41 of the Commission's rules before manufacturing or importing the product. A party may request a Commission determination of whether its apparatus is an exempt display-only video monitor, may request a waiver of the apparatus requirements for mobile DTV, and may prospectively request a purpose-based waiver. Further, a covered entity that seeks to use an "alternate means" to comply with the apparatus requirements may file a request pursuant to Section 1.41 of the Commission's rules for a determination that the proposed alternate means satisfies the statutory requirements. The *Report and Order* also adopts procedures for complaints alleging a violation of the apparatus rules.

IMPACT ON SMALL BUSINESS

- Parties, including small entities, may petition for a waiver for good cause under Section 1.3 of the Commission's rules of the emergency information rules adopted pursuant to Section 202 of the CVAA. For example, broadcast stations in smaller markets that do not have the necessary equipment to provide a secondary audio stream can file a request for waiver of the requirements. Many covered entities, including small entities, already provide or have the capability to pass through secondary audio streams for emergency information to consumers.
- The *Report and Order* adopts procedures enabling the Commission to grant exemptions to the apparatus rules adopted pursuant to Section 203 of the CVAA, where a petitioner has shown that compliance is not achievable or is not technically feasible. This exemption process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, the *Report and Order* provides that parties may use alternate means of compliance to the Section 203 apparatus rules. Individual entities, including smaller entities, may benefit from these provisions.

INTERNET LINKS

- Report and Order and Further Notice of Proposed Rulemaking – FCC 13-45

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-45A1.docx

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-45A2.docx

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-45A3.docx

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-45A4.docx

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-45A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-45A1.txt