

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Accessible Emergency Information, and |) | |
| Apparatus Requirements for Emergency |) | MB Docket No. 12-107 |
| Information and Video Description: |) | |
| Implementation of the Twenty-First Century |) | |
| Communications and Video Accessibility Act of |) | |
| 2010 |) | |
| |) | |
| Video Description: Implementation of the |) | MB Docket No. 11-43 |
| Twenty-First Century Communications and Video |) | |
| Accessibility Act of 2010 |) | |
| |) | |
| Petitions for Waiver |) | |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2015

Released: May 26, 2015

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“*Order*”), we address two petitions for waiver of certain provisions in Section 79.2(b)(2)(ii) of the Commission’s rules, which require that emergency information provided visually during non-newscast video programming be made audibly accessible to individuals who are blind or visually impaired through the use of the secondary audio stream (“Audible Crawl Rule”).¹ First, we grant with conditions the request of the American Cable Association (“ACA”) for waiver of the emergency information rule for certain hybrid (digital/analog) cable systems to comply with the Audible Crawl Rule by providing free equipment to analog customers who are blind or visually impaired to enable access to the digital secondary audio stream. Second, we grant with conditions ACA’s request to give certain analog-only cable systems a waiver of the rule’s compliance deadline until June 12, 2018.² Third, we grant the request of the National Association of Broadcasters (“NAB”) to give broadcasters a six-month waiver of the rule’s compliance deadline. Fourth, we grant NAB’s request for waiver of the requirement to aurally describe visual but non-textual emergency information, such as maps or other graphic displays, but limit this waiver to 18 months. Finally, we grant NAB’s request for a limited waiver allowing broadcasters to exclude school closings information from the Audible Crawl Rule.³ Accordingly, for the reasons set forth below, we grant both the ACA Petition and the NAB Petition, subject to the conditions described below.

¹ See 47 C.F.R. § 79.2(b)(2)(ii).

² The two ACA waiver requests are collectively referred to herein as the “ACA Petition.”

³ The three NAB waiver requests are collectively referred to herein as the “NAB Petition.”

2. On April 9, 2013, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),⁴ the Commission released the *Emergency Information/Video Description Order*, which adopted rules requiring that emergency information⁵ provided in video programming be made accessible to individuals who are blind or visually impaired and that certain apparatus be capable of delivering video description and emergency information to those individuals.⁶ Section 202 of the CVAA directed the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners to convey emergency information in a manner accessible to individuals who are blind or visually impaired.⁷ The *Emergency Information/Video Description Order* implemented this mandate by requiring the use of a secondary audio stream⁸ to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts, for example, in an on-screen crawl. Among the rules adopted in the *Emergency Information/Video Description Order* was Section 79.2(b)(2)(ii), which requires video programming providers and distributors to make emergency information accessible as follows:⁹

Emergency information that is provided visually during programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming, must be accompanied with an aural tone, and beginning May 26, 2015, must be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide the emergency information aurally. Emergency information provided aurally on the secondary audio stream must be preceded by an aural tone and must be conveyed in full at least twice. Emergency information provided through use of text-to-speech (“TTS”) technologies must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information. The video programming distributor or video programming provider that creates the visual emergency information content and adds it to

⁴ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). The CVAA was enacted on October 8, 2010.

⁵ The CVAA directed the Commission to apply here the definition of “emergency information” found in the Commission’s rules. 47 U.S.C. § 613(g)(1). “Emergency information” is defined in the Commission’s rules as “[i]nformation, 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.” 47 C.F.R. § 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.” Note to 47 C.F.R. § 79.2(a)(2).

⁶ *See 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (“Emergency Information/Video Description Order”). Video description, which is also referred to as audio description, is defined as “[t]he 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).

⁷ 47 U.S.C. § 613(g)(2).

⁸ 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.

⁹ 47 C.F.R. § 79.2(b)(2)(ii).

the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone. Video programming distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers.

3. We evaluate the waiver requests in the petitions filed by ACA and NAB pursuant to the general waiver authority in Section 1.3 of the Commission's rules.¹⁰ To waive a requirement for good cause, we must (1) explain why deviating from the general requirement serves the public interest, and (2) explain the nature of the special circumstances.¹¹

II. ACA PETITION

A. Background

4. On March 18, 2015, ACA filed a petition requesting waivers, for two classes of cable systems, of Audible Crawl Rule's requirement that cable systems pass through emergency information on the secondary audio stream.¹² First, for hybrid digital/analog ("hybrid") systems that lack the equipment needed to pass through secondary audio streams on their analog service, ACA asks the Media Bureau ("Bureau") to permit an alternate means of compliance for the pass-through requirement.¹³ Specifically, ACA requests that the Bureau permit these hybrid systems to meet the pass-through requirement through the provision of free set-top boxes ("STBs") for up to three analog television sets per household of each eligible customer, until such time that the hybrid system obtains the equipment necessary to provide the secondary audio stream on their analog service, or ceases providing broadcast stations in analog.¹⁴ Second, for analog-only systems that lack the equipment needed to pass through secondary audio streams, ACA requests that the Bureau waive the compliance deadline from May 26, 2015 until at least June 12, 2018, with the opportunity to seek a further waiver from the Bureau, if still needed at that time.¹⁵ No comments were filed in response to the ACA Petition.

B. Discussion

5. We find that there is good cause to waive Section 79.2(b)(2)(ii) for a limited number of qualifying small cable systems and grant each of the two unopposed waivers requested in the ACA

¹⁰ 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."). We note that the Commission generally delegated authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider waiver requests of the rules adopted in the *Emergency Information/Video Description Order*, and, in particular, delegated authority to the Media Bureau in the event ACA filed a request for waiver or extension of time seeking relief on behalf of hybrid and analog-only systems that lack the equipment to pass-through secondary audio streams, such as the instant request. *Emergency Information/Video Description Order*, 28 FCC Rcd at 4887-89, 4932, ¶¶ 20, 99. See 47 C.F.R. §§ 0.61, 0.283, and 1.3.

¹¹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² American Cable Association, Petition for Waiver, MB Docket Nos. 12-107, 11-43 (filed Mar. 18, 2015) ("ACA Petition"). On March 19, 2015, the Bureau issued a public notice seeking comment on the ACA Petition. See *Media Bureau Action, Media Bureau Seeks Comment on American Cable Association's Petition for Waiver of Accessible Emergency Information Requirements*, MB Docket Nos. 12-107, 11-43, Public Notice, 30 FCC Rcd 2367 (MB 2015). The comment cycle closed April 9, 2015. *Id.*

¹³ ACA Petition at 10-13.

¹⁴ ACA Petition at 10-13.

¹⁵ ACA Petition at 13-16. See 47 C.F.R. § 79.2(b)(2)(ii) (setting a compliance deadline of May 26, 2015). See also *Emergency Information/Video Description Order*, 28 FCC Rcd at 4900-01, ¶ 37.

Petition, subject to the conditions described below. We address each of the two class waiver requests in turn.

1. Alternate Means of Compliance for Hybrid Systems that Lack the Equipment to Pass Through the Secondary Audio Stream

6. First, we grant with conditions ACA's request for a class waiver to permit an alternate means of compliance for hybrid systems that lack the equipment to pass through secondary audio streams on their analog service. Specifically, we will allow qualifying hybrid systems to comply with the secondary audio stream pass-through requirement by providing free STBs to customers who are blind or visually impaired, until such time that the hybrid system either obtains the equipment necessary to provide the secondary audio stream on their analog service or ceases providing broadcast stations in analog.¹⁶ The STBs provided as the alternate means of compliance must enable the customer's receipt of secondary audio streams of all stations carried in a digital format¹⁷ that provide audible emergency information and must otherwise comply with the Commission's rules.¹⁸ As discussed below, we decline to adopt ACA's request to limit to three the number of free STBs provided to customers and adopt a notification requirement to ensure analog service customers who are blind or visually impaired are informed that they will need a digital STB from their cable system in order to access emergency information through the secondary audio stream.

7. We find that allowing a limited number of hybrid systems to use an alternative means of compliance can achieve the same goal of accessibility in a more cost-effective manner.¹⁹ According to ACA, "only a limited number of hybrid systems lack the equipment necessary to decode emergency information and video description or [pass through] broadcast [secondary audio] streams on their analog service. These systems rely on legacy equipment that cannot [pass through] a [secondary audio] stream on their analog service without incurring relatively significant costs per affected headend."²⁰ We agree with ACA that the cost of obtaining the equipment necessary to pass through secondary audio streams on an analog service may be prohibitive for small cable systems.²¹ We further agree that the requested relief "will allow the Commission to meet its statutory obligation of making emergency information provided by broadcasters in an on-screen crawl aurally accessible to the blind and visually impaired community in a way that both furthers the public interest and avoids causing either undue financial burdens to smaller operators or the suspension of analog cable service to smaller and harder to serve communities."²²

8. *Number of STBs.* Although in its petition ACA proposes to limit the number of STBs that must be provided per household to up to three analog television sets, we find it more appropriate for hybrid systems to provide customers as many STBs as they need to access the emergency information.

¹⁶ ACA Petition at 10-13.

¹⁷ The required STB must provide the customer with access to at least the same channels that the customer received on his or her analog television set without using a STB. *See* ACA Petition at 11, n.28.

¹⁸ For example, the STBs provided by the hybrid systems must comply with the *User Interfaces Order* by the appropriate compliance deadlines. *See* 47 C.F.R. §§ 79.108(b), 79.109(c).

¹⁹ ACA Petition at 10. ACA further explains that many of these hybrid systems are transitioning to all-digital within 5 to 10 years and do not plan to invest in more analog equipment, which they would have to do to comply with the secondary audio stream pass-through requirement. *Id.* at n.25. *See also id.* at 6-10.

²⁰ ACA Petition at 4. Based on a 2013 survey, ACA estimates that 174 hybrid systems lack the equipment necessary to pass through secondary audio streams on their analog service. ACA Petition at 8.

²¹ ACA Petition at 9. ACA estimates that "the low-cost option for new equipment capable of passing through [the secondary audio stream] on analog service would cost around \$1,700 per channel plus labor." ACA contends that, assuming that a cable system is carrying four broadcast stations, the cost would be more than \$6,800 plus labor for the system to upgrade its equipment. *Id.*

²² ACA Petition at 17-18.

ACA does not justify a restriction on the number of STBs, except to say that “providing three STBs is not an insignificant cost.”²³ In a recent *ex parte*, however, ACA agrees that a limit on the number of STBs provided may not be necessary if cable operators are permitted to use consumer verification procedures,²⁴ which this *Order* does allow.²⁵ We find that placing an arbitrary restriction on the number of STBs a consumer may have is inconsistent with Section 202 of the CVAA, which directed the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners to convey emergency information in a manner accessible to individuals who are blind or visually impaired.²⁶ Customers in households with more than three analog TV sets would not be made “whole” by the alternate means of compliance if they could not receive emergency information via secondary audio streams on all television sets.²⁷ Instead, we find that qualifying hybrid systems relying on the alternate means of compliance must provide free STBs up to the number requested by the customer, but no more than the number of analog TV sets in the customer’s household that are connected to the cable service. We find that this will ensure full accessibility for customers who are blind or visually impaired. Further, as ACA suggests, some hybrid systems may “conclude that it is more cost effective to purchase the necessary equipment than to utilize the waiver and to provide free STBs to eligible customers.”²⁸ Because we find that the alternate means of compliance established by this *Order* will ensure full accessibility to customers who are blind or visually impaired, we agree with ACA that there is no need to set an upper subscriber limit on the hybrid systems that are permitted to comply through an alternate means.²⁹ In addition, as ACA explains, only the smallest of hybrid systems will find it more cost effective to provide free STBs to customers, rather than to purchase the necessary equipment to pass through the secondary audio on their analog service.³⁰

9. Verification. As requested by ACA, we permit hybrid systems providing digital STBs to customers as an alternate means of compliance to verify a customer’s eligibility as an individual who is blind or visually impaired, consistent with the consumer verification rules adopted in the *User Interfaces Order*, to protect systems against the possibility of fraud or abuse.³¹ To the extent that cable systems employ consumer verification procedures, we will require them to comply with the verification rules adopted in the *User Interfaces Order*.³² This includes allowing consumers to provide a wide array of

²³ ACA Petition at 13. In its *ex parte* filing, ACA indicates its concern about “customer fraud.” ACA *ex parte* (filed May 22, 2015) at 2.

²⁴ See ACA *ex parte* (filed May 22, 2015) at 2 (stating allowing cable operators to use consumer verification “could negate the need to limit the number of free STBs that operators would need to make available to an eligible customer”).

²⁵ See *infra* ¶ 9.

²⁶ 47 U.S.C. § 613(g)(2).

²⁷ We note that ACA asserts its alternate means proposal “is designed to make eligible customers ‘whole’” ACA Petition at 13 (emphasis added).

²⁸ ACA Petition at 13. In the event we receive evidence of significant fraud or abuse from customers of cable systems relying on this alternate means of compliance because customers are asking for more STBs than they need or are otherwise abusing this benefit, we will revisit this issue.

²⁹ See ACA Petition at 12-13.

³⁰ See ACA Petition at 13.

³¹ ACA Petition at 11-12. See 47 C.F.R. § 79.108(e) (“Verification of eligibility”). See also *Accessibility of User Interfaces, and Video Programming Guides and Menus; 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*, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17409-11, ¶ 132 (2013) (“*User Interfaces Order*”).

documentation to verify eligibility for the free STBs provided.³³ In addition, cable operators must protect personal information gathered from consumers through their verification procedures.³⁴

10. **Notice to Customers.** Although ACA did not propose a notice requirement in this portion of its waiver request,³⁵ we conclude it is essential that a hybrid system relying on the alternate means of compliance notify its analog service customers who are blind or visually impaired that they will need a digital STB from their cable system in order to access emergency information through the secondary audio stream. The alternate means of compliance established by this *Order* will be effective only if customers who are blind or visually impaired are notified to make them aware of this need for a digital STB. Specifically, we require a hybrid system relying on the alternate means of compliance to provide the following notice in accessible formats to all analog customers and potential analog customers:³⁶

Mandatory Accessibility Notice: To comply with FCC rules, [Insert Name of Cable Operator] must pass through audible emergency information on the secondary audio stream when it is provided for customers who are blind or visually impaired. Customers who are blind or visually impaired and receive cable service on an analog television set should contact [Insert Name of Cable Operator] at [Insert Phone Number and Email of Cable Operator] for more information or to obtain the necessary accessibility equipment at no charge.

First, we require that this notice must be provided directly to current analog customers within five months of the release of this *Order*³⁷ and annually thereafter for as long as the system chooses to rely on the

(...continued from previous page)

³² Under Section 79.108(e), covered entities “may only require consumer verification of eligibility as an individual who is blind or visually impaired to the extent the entity chooses to rely on an accessibility solution that involves providing the consumer with sophisticated equipment and/or services at a price that is lower than that offered to the general public.”

³³ See 47 C.F.R. § 79.108(e). As explained in the *User Interfaces Order*, examples of what would be considered as reasonable verification requirements that accommodate a wide array of methods for consumers to document eligibility as an individual who is blind or visually impaired include, but are not limited to: proof of participation in a nationally-established program for individuals who are blind or visually impaired, such as the Commission’s National Deaf-Blind Equipment Distribution Program or the National Library Service’s talking books program; or documentation from any professional or service provider with direct knowledge of the individual’s disability, such as a social worker, case worker, counselor, teacher, school superintendent, professional librarian, doctor, ophthalmologist, optometrist, or registered nurse. *User Interfaces Order*, 28 FCC Rcd at 17409-11, ¶ 132, n.507.

³⁴ 47 C.F.R. § 79.108(e) (requiring covered entities to comply with the requirements of 47 U.S.C. § 338(i)(4)(A) and 47 U.S.C. § 631(c)(1) to protect personal information).

³⁵ We note that in its *ex parte* filing, ACA “did not object” to the imposition of a notice requirement on hybrid systems. *See ACA ex parte* (filed May 22, 2015) at 2.

³⁶ This notice is not subject to Office of Management and Budget approval under the Paperwork Reduction Act because the notice is “public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public,” and therefore is not a “collection of information.” 5 C.F.R. § 1320.3(c)(2).

³⁷ We note that this timing ensures that notice is provided to consumers at least 30 days before the November 30, 2015, compliance deadline established in this *Order* for broadcasters to comply with Section 79.2(b)(2)(ii) of the Commission’s rules, 47 C.F.R. § 79.2(b)(2)(ii). *See infra* Section III.B.1. *See also* ACA Petition at 15 (suggesting that required notices for analog-only systems should be made “between 30 and 60 days before the effective date of the emergency information pass-through requirement”); ACA *ex parte* (filed May 22, 2015) at 2 (“recommend[ing] an initial notice be provided no later than 30 days prior to the date that broadcasters are required to provide an aural representation of visual emergency information on a secondary audio stream.”).

alternate means of compliance established by this *Order*.³⁸ Although we do not require a specific means for satisfying this notice requirement, we require the cable system to provide this targeted notice via a means of directly contacting customers, such as via a billing statement or billing insert, a phone call or email to customers.³⁹ Second, we also require that this notice be provided to both current and potential analog customers when they inquire about accessibility options.⁴⁰ Although we do not require a specific means for satisfying this notice requirement, we find that the cable system could provide this required notice through their websites (if applicable), marketing materials, and customer service representatives. If we find that consumers are not being adequately informed about the availability of free STBs, we may revisit whether the waiver is in the public interest.

2. Delayed Compliance for Analog-Only Systems that Lack the Equipment to Pass Through the Secondary Audio Stream

11. Second, we grant with conditions ACA's request to waive the compliance deadline until June 12, 2018 for analog-only systems that lack the equipment needed to pass through the secondary audio stream.⁴¹ As a condition of this waiver, we adopt a notification requirement, but modify the notice language proposed by ACA. The Commission has recognized that analog-only cable systems may face unique difficulties in complying with the secondary audio stream pass-through requirement.⁴² Analog-only systems are very small in size,⁴³ often serve rural areas, and generally lack resources and utilize dated technology.⁴⁴ Based on the record before us, we agree with ACA that it would be financially infeasible at this time for analog-only systems (which currently lack the necessary equipment) to purchase new equipment to pass through secondary audio streams.⁴⁵ We recognize that analog-only cable systems "frequently provide a value-priced option for subscribers that only need very basic service" and we are

³⁸ We agree with ACA that this annual notice may be consolidated with annual notices given pursuant to other Commission requirements. *See ACA ex parte* (filed May 22, 2015) at 2 (asking that cable operators be allowed to include this annual notice as part of their annual cable customer service general information notifications).

³⁹ The Commission has in other contexts required notice via billing statements or billing inserts. *See, e.g.*, 47 C.F.R. § 79.1(i)(1) (requiring video programming distributors to make contact information for the handling of immediate closed captioning concerns and written closed captioning complaints available "on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements)").

⁴⁰ The Commission has in other contexts required that notice be provided about an accessible solution in response to a consumer inquiry about accessibility. *See, e.g.*, 47 C.F.R. § 79.108(d)(1) ("MVPD notices. Covered MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows: (1) When providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices.").

⁴¹ ACA Petition at 13. In its *ex parte*, ACA asked for six more months in the event we grant the broadcasters' six-month waiver of the rule's compliance deadline. *ACA ex parte* (filed May 22, 2015) at 3. We decline to entertain this last minute request.

⁴² *Emergency Information/Video Description Order*, 28 FCC Rcd at 4887-89, ¶ 20.

⁴³ ACA estimates that the average analog-only system serves about 206 subscribers. *ACA Petition* at 14.

⁴⁴ *ACA Petition* at 13.

⁴⁵ *ACA Petition* at 14. ACA further explains that "[d]ue to their small size, analog-only systems have far fewer customers over which to spread the costs of system upgrades. Operators of these systems also often face higher programming costs than those incurred by larger operators on a per-subscriber basis, have higher fixed non-programming costs because they serve rural markets, and must cope with fierce competition from DBS providers in rural markets. Requiring them to purchase new equipment will provide no benefit to the blind and visually impaired community if, as a result, operators must shut down systems, thus eliminating access to cable services in some communities." *Id.*

persuaded that the per-subscriber costs on these very small systems to upgrade equipment to comply with the secondary audio stream pass-through requirement might cause them to shut down.⁴⁶

12. Notice to Customers. We agree with ACA that we should establish a notice requirement to ensure that customers who are blind or visually impaired are informed that emergency information will not be audibly accessible on the secondary audio stream because the system is receiving an exemption from the Commission's requirement.⁴⁷ However, we modify the notice requirement proposed by ACA to ensure the notice reaches both current and potential customers⁴⁸ and change the specific language suggested by ACA to make it more concise and consumer-friendly.⁴⁹ We require that an analog-only system relying on the exemption established by this *Order* to provide the following notice in accessible formats to all current and potential customers:⁵⁰

Mandatory Accessibility Notice: [Insert Name of Cable Operator] qualifies for a waiver from the FCC that relieves [name of cable operator] of the requirement to pass through audible emergency information on the secondary audio stream when it is provided for customers who are blind or visually impaired. Therefore, customers who are blind or visually impaired using [name of cable operator] will not be able to receive audibly accessible emergency information on the secondary audio stream. Other television providers in your area may make emergency information audible on the secondary audio stream. Note that the emergency information contained in a secondary audio stream is different from emergency alerts provided through the Emergency Alert System (EAS), which are provided by [Insert Name of Cable Operator] to all subscribers of this system. For more information, contact [Insert Name of Cable Operator] at [Insert Phone Number and Email of Cable Operator].

First, we require that this notice be provided directly to current analog customers within five months of the release of this *Order* and annually thereafter for as long as the system chooses to rely on the waiver

⁴⁶ ACA Petition at 14.

⁴⁷ See ACA Petition at 15-16.

⁴⁸ ACA suggested that the notice be provided to current subscribers “between 30 and 60 days before the effective date of the emergency information pass-through requirement” and does not suggest a notice for potential subscribers. ACA Petition at 15.

⁴⁹ See ACA Petition at 16. ACA proposed the following notice:

On (DATE), cable operators, direct broadcast satellite providers, and Internet Protocol (IP) television providers are required to provide emergency information aurally on a secondary audio stream concurrent with emergency information that is provided visually (such as that provided via crawls) during programming that is not a newscast. The purpose of the obligation is to make this type of emergency information accessible to individuals who are blind or visually impaired. Due to its technical incapability (NAME OF CABLE OPERATOR) is not required to comply with this requirement until (DATE). Therefore, if you are blind or visually impaired, or there is an individual who is blind or visually impaired in your household, this emergency information will not be accessible. It may be available from another cable operator, direct broadcast satellite provider, or IP television provider in your area. The emergency information contained in a secondary audio stream is different from emergency alerts provided through the Emergency Alert System (EAS), which are provided by (NAME OF CABLE OPERATOR) to all subscribers of this system. To learn more about this matter, you may contact (NAME OF CABLE OPERATOR) and (PHONE NUMBER OF CABLE OPERATOR), or visit (FCC WEB PAGE ADDRESS).

⁵⁰ This notice is not subject to Office of Management and Budget approval under the Paperwork Reduction Act because the notice is “public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public,” and therefore is not a “collection of information.” 5 C.F.R. § 1320.3(c)(2).

granted by this *Order*.⁵¹ Although we do not require a specific means for satisfying this notice requirement, we require the cable system to provide this targeted notice through a means of directly contacting customers, such as via a billing statement or billing insert, a phone call or email to customers. Second, we require that this notice must be provided to both current and potential customers when they inquire about accessibility options. Although we do not require a specific means for satisfying this notice requirement, we find that the cable system could provide this required notice through notices on their websites (if applicable), marketing materials and customer service representatives. If we find that consumers are not being adequately informed about analog-only cable system exemptions, we may revisit whether the exemptions should continue.

III. NAB PETITION

A. Background

13. On March 27, 2015, NAB filed a petition requesting three limited waivers of the Audible Crawl Rule.⁵² First, NAB requests that the Commission grant a six-month partial exemption from, or limited waiver of, the Audible Crawl Rule from May 26, 2015 until November 26, 2015.⁵³ NAB argues that broadcasters need this extension because the hardware and software necessary for broadcasters to aurally transcribe emergency information crawls has not yet been released and delivered by the vendors in many cases, and additional time is needed to test, order, ship, and install the solution developed by the vendors.⁵⁴ Second, NAB asks that the Commission waive the requirement that visual but non-textual emergency information be included in the aural representation of emergency information on the secondary audio stream until technological solutions are available.⁵⁵ According to NAB, it is currently infeasible to comply with this requirement with respect to radar maps and similar moving graphics because they do not contain text files that can be converted to speech.⁵⁶ Finally, NAB requests that the Commission temporarily waive the requirement to aurally convey school closing information on the secondary audio stream, while NAB considers alternatives with input from stakeholders.⁵⁷

14. Commenters generally support grant of the requested waivers in the NAB Petition. On behalf of consumers who are blind or visually impaired, AFB/ACB expressed “frustration” with the

⁵¹ We make this an annual notice, rather than a one-time notice as suggested by ACA, to ensure affected customers are reminded that emergency information will not be available aurally on the secondary audio stream.

⁵² National Association of Broadcasters, Petition for Temporary Partial Exemption and Limited Waiver, MB Docket Nos. 12-107, 11-43 (filed Mar. 27, 2015) (“NAB Petition”). On March 30, 2015, the Media Bureau issued a public notice seeking comment on the NAB Petition. *See Media Bureau Action, Media Bureau Seeks Comment on National Association of Broadcasters’ Petition for Waiver of Accessible Emergency Information Requirements*, MB Docket Nos. 12-107, 11-43, Public Notice, DA 15-394 (MB rel. Mar. 30, 2015) (“NAB Public Notice”). The comment cycle closed April 20. Ten comments and one reply were filed. Commenters include broadcast stations, national and state broadcast associations, a broadcast engineer association, an equipment vendor and consumer groups. *See Appendix*.

⁵³ NAB Petition at 2, 5-9. In its reply, NAB agrees with the comments of the State Associations which request a Monday, November 30 deadline to avoid conflicting with the Thanksgiving holiday. NAB Reply Comments at 2, n.3 (citing State Associations Comments at 2, n.3). *See* 47 C.F.R. § 79.2(b)(2)(ii) (setting a compliance deadline of May 26, 2015). *See also Emergency Information/Video Description Order*, 28 FCC Rcd at 4900-01, ¶ 37.

⁵⁴ *See id.*

⁵⁵ *Id.* at 9-11. *See Emergency Information/Video Description Order*, 28 FCC Rcd at 4891-92, ¶ 24.

⁵⁶ NAB Petition at 10.

⁵⁷ *Id.* at 11-14. *See* 47 C.F.R. § 79.2(a)(2); *Emergency Information/Video Description Order*, 28 FCC Rcd at 4896-97, ¶ 31.

broadcast industry's compliance efforts, but indicated it would accept a one-time, six-month waiver.⁵⁸ AFB/ACB also says it would not object to the request for a delayed compliance date with respect to making audibly accessible on the secondary audio stream school closings information and visual but non-textual emergency information,⁵⁹ but asks the Commission "to make it clear that no emergency information of any kind can be delivered to any viewer exclusively in graphical form."⁶⁰

B. Discussion

15. We find that there is good cause to waive Section 79.2(b)(2)(ii) and grant each of the three waivers requested in the NAB Petition, but limit our grant of the waiver with respect to visual but non-textual emergency information to 18 months. We address each of NAB's three waiver requests in turn.

1. Six-Month Waiver of the Audible Crawl Rule

16. First, we grant NAB's request for a six-month waiver – more specifically, until November 30, 2015 – of the compliance deadline for video programming distributors to comply with the Audible Crawl Rule, *i.e.*, to provide aurally on the secondary audio stream emergency information presented visually in non-newscast programming. The record created in response to the NAB Petition shows that the technical solutions necessary for broadcasters to aurally transcribe emergency information text crawls on the secondary audio stream were not developed and brought to market in time for broadcasters to test and implement these solutions by the current May 26, 2015 compliance deadline.⁶¹ NAB explains that "not only are there technical difficulties associated with implementation of viable audible crawl solutions, but broadcasters must also rely on numerous vendors – and timelines beyond their control – to bring these solutions to market."⁶² NAB further explains that the technical solutions to comply with the Audible Crawl Rule only recently have become available and many broadcasters only recently have been able to evaluate these solutions.⁶³ We are persuaded by NAB and the other broadcast industry comments that a six-month extension of the compliance deadline is needed for broadcasters to purchase, install, and test solutions that will effectively communicate emergency information to their viewers who are blind or visually impaired.⁶⁴ Therefore, although we share AFB/ACB's frustration with

⁵⁸ AFB/ACB Comments at 2 (stating "if allowing broadcast stations around the country an additional six months to come into compliance is the only thing that stands in the way of the nationwide reliability of accessible audible emergency information, then by all means, the Commission should eliminate this obstacle.").

⁵⁹ AFB/ACB would limit the waiver for delayed compliance to aurally describe visual but non-textual emergency information on the secondary audio stream to 18 months and would limit the waiver of the requirement to include school closings information aurally on the secondary audio stream to one year. AFB/ACB Comments at 2-3.

⁶⁰ AFB/ACB Comments at 3.

⁶¹ See NAB Reply at 2-3 (stating "with the deadline fast approaching and few vendor solutions available on the market, broadcasters will be unable to evaluate, purchase, install, and test the vendor systems prior to the May 26, 2015 deadline"). See also, e.g., State Associations Comments at 3 (stating six-month waiver is necessary "to permit vendors time to complete the design and distribution of hardware and software capable of performing the conversion of textual content into aural content, as well as to permit TV stations adequate time to test and implement these technical solutions"); Monroe Comments at 1 (stating six-month waiver is "reasonable and justifiable given the need for video programmers to adequately test, integrate and implement these technologies in their respective technical plants"); Gray Comments at 2 ("extending the deadline will allow time for the necessary testing, dialogue with vendors, refinement and integration of an improved solution").

⁶² NAB Petition at 16.

⁶³ NAB Reply at 2-3 ("vendors are just now rolling out products for this purpose, and many broadcasters had their first opportunity to evaluate these new products at the recently concluded NAB show"). See State Associations Comments at 3-4; Entravision Comments at 2; CMG Comments at 2.

⁶⁴ See, e.g., State Associations Comments at 3-4 (stating that if forced to comply by the current deadline, "TV stations' only practical option ... is to reduce or eliminate all visual emergency information – a result that allows (continued....)

the slower than expected progress of the broadcast industry to develop and implement these technical solutions, we find that affording broadcasters limited additional time – until November 30, 2015 – to comply with the Audible Crawl Rule serves the public interest. We expect, however, as NAB assures us, that broadcasters “will launch audible crawls as soon as it is feasible for them to do so.”⁶⁵

2. 18-Month Waiver of Requirement to Aurally Describe Visual But Non-Textual Emergency Information

17. Second, we waive the requirement to aurally describe visual but non-textual emergency information (e.g., maps or other graphic displays),⁶⁶ but limit this waiver to 18 months, as suggested by AFB/ACB.⁶⁷ NAB and the broadcast commenters argue that radar maps and similar moving graphics do not contain text files that can be converted to speech and, therefore, an automated text-to-speech (“TTS”) solution cannot be used to aurally describe them.⁶⁸ NAB suggests that this issue “is an appropriate topic for discussion within the [Disability Advisory Committee (DAC)] because there are currently no technical solutions at this time.”⁶⁹ AFB/ACB states that we should “suspend any requirement that inherently graphical information be rendered audibly” for 18-months, during which time “further work can be done to develop reliable automated solutions.”⁷⁰ We agree. Moreover, the record indicates that visual but non-textual emergency information is generally duplicative of emergency information contained in an accompanying on-screen crawl, which would be aurally transcribed on the secondary audio stream.⁷¹

(...continued from previous page)

stations to comply with the rule, but fails to benefit those with impaired vision while also harming the flow of information to everyone else”); Broadcaster Coalition at 4 (stating “[f]aced with a choice of doing it poorly and triggering potential Commission enforcement auction, versus not doing it at all, some broadcasters may be forced to hold back on the emergency information they provide, which is in no one’s interest”).

⁶⁵ NAB Reply at 5. We note, as does NAB, that “[w]hile stations work to launch audible crawls on the [secondary audio stream], vision-impaired viewers will continue to be alerted by an attention signal to tune to other available audio sources for information, as they do today.” *Id.*

⁶⁶ NAB Petition at 9-11 (seeking “waiver of the requirement to include non-textual, graphical information in the audible crawl”). *See Emergency Information/Video Description Order*, 28 FCC Rcd at 4891-92, ¶ 24 (finding that, if visual but non-textual emergency information is shown during non-newscast programming (e.g., maps or other graphic displays), the aural description of this information must accurately and effectively convey the critical details regarding the emergency and how to respond to the emergency).

⁶⁷ AFB/ACB Comments at 2-3.

⁶⁸ *See* NAB Petition at 10; NAB Reply at 3; SBE Comments at 2; Gray Comments at 2; Broadcaster Coalition at 5; State Associations at 4.

⁶⁹ NAB Petition at 11, n.13. To the extent covered entities are concerned that other emergency information should be prioritized over aural descriptions of emergency information contained in maps and graphics, we note that the Commission is taking up this prioritization issue in the *Second Further Notice of Proposed Rulemaking* (“Second FNPRM”) adopted last week in this docket. *See 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*, MB Docket No. 12-107, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 15-56 at ¶ 38 (adopted May 21, 2015; but not released as of the adoption date of this *Order*) (“Second FNPRM”) (“seek[ing] comment on how video programming providers and video programming distributors should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time.”).

⁷⁰ AFB/ACB Comments at 3. We note that this is an issue that may merit future consideration by the DAC.

⁷¹ *See* NAB Petition at 10 (explaining that “television stations present radar maps to enhance clarity, not to convey separate information”); Broadcaster Coalition at 4 (explaining that maps and graphics “information is generally duplicative of information that is already conveyed in the audible crawl” and “maps and graphics do not include information that visually impaired viewers are unable to obtain”); State Associations Comments at 4-5 (stating that “the emergency information contained in [visual information such as Doppler radar or weather maps] is already

(continued....)

Thus, we believe that this waiver will not unduly disrupt the availability of emergency information while the industry develops a technical solution.⁷² Furthermore, to the extent that the critical details regarding the emergency and how to respond conveyed by a map or other graphic display are being aurally described on the secondary audio stream because, for example, these critical details are also contained in a crawl, then aurally describing the map or other graphic display would not be necessary. Upon the expiration of this 18-month waiver, covered entities will be required to aurally describe the critical details regarding the emergency and how to respond to the emergency (as set forth in Section 79.2(a)(2)),⁷³ including the critical details conveyed solely by a map or other graphic display.⁷³

3. Temporary Waiver of Requirement to Include School Closings in the Audible Crawl

18. Finally, we waive the requirement to include school closings information aurally on the secondary audio stream, while the Commission reconsiders this requirement in the *Second FNPRM*.⁷⁴ NAB argues that an alternative solution is needed because audible crawls of school closings would be “prolonged and inefficient” and would “crowd out more important emergency information.”⁷⁵ All comments on this issue support this waiver while the Commission and interested parties consider more efficient alternatives,⁷⁶ although AFB/ACB requests that we limit the duration of the waiver to one year.⁷⁷ We find that a one-year time-limit is unnecessary given the Commission’s commitment to work with stakeholders to resolve this issue expeditiously, as evidenced by adoption of the *Second FNPRM* last week.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 613, and sections 0.61, 0.283, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.61, 0.283, and 1.3, this *Memorandum Opinion and Order* IS ADOPTED.

20. IT IS FURTHER ORDERED that the petition for waiver of Section 79.2(b)(2)(ii) of the Commission’s rules, 47 C.F.R. § 79.2(b)(2)(ii), for certain analog-only and hybrid systems, filed by the American Cable Association, IS GRANTED subject to the conditions described herein.

(...continued from previous page)

being conveyed verbally on the main channel and through the crawls that are being presented aurally via [the secondary audio stream”].

⁷² NAB Petition at 10.

⁷³ 47 C.F.R. § 79.2(a)(2). *See supra* note 6. *See also Emergency Information/Video Description Order*, 28 FCC Rcd at 4891-92, ¶ 24. We disagree with AFB/ACB that “all emergency information delivered to the public must be provided in text format” and that [g]raphical emergency information should be permitted but only as a convenience for viewers with sight for whom such visual depiction of emergency information may be of additional but redundant value.” AFB/ACB Comments at 2. Our rules require that if visual but non-textual emergency information contains such critical details of a current emergency, then those same critical details must be made accessible to customers who are blind or visually impaired on the secondary audio stream.

⁷⁴ *See Second FNPRM* at ¶ 43 (“seek[ing] comment on whether the Commission should reconsider its requirement for ‘school closings and changes in school bus schedules’ resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream”).

⁷⁵ *See* NAB Petition at 12; NAB Reply at 4.

⁷⁶ *See* NAB Reply at 4; State Associations Comments at 6; Broadcaster Coalition Comments at 6; Meredith Corporation, *et al.* Comments at 1-2; CMG Comments at 3-4; Entravision Comments at 3; Gray Comments at 2.

⁷⁷ AFB/ACB Comments at 2.

21. IT IS FURTHER ORDERED that the petition for temporary partial exemption and limited waiver of Section 79.2(b)(2)(ii) of the Commission's rules, 47 C.F.R. § 79.2(b)(2)(ii), filed by the National Association of Broadcasters, IS GRANTED subject to the conditions described herein.

22. To request materials 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 and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

APPENDIX

List of Comments and Reply Comments

COMMENTS

1. American Foundation for the Blind (AFB) and American Council of the Blind (ACB) (“AFB/ACB” or “Consumer Groups”) filed 04/20/2015
2. Ball State University (WIPB-TV / Indiana Public Radio) filed 04/15/2015
3. Block Communications, Inc.; Cordillera Communications, Inc.; Granite Broadcasting Corporation; Media General, Inc. and WBOC, Inc. (“Broadcaster Coalition”) filed 04/13/2015
4. Cox Media Group (“CMG”) filed 04/13/2015
5. Entravision Communications Corporation (“Entravision”) filed 04/13/2015
6. Gray Television, Inc. (“Gray”) filed 04/10/2015
7. Meredith Corporation, Nexstar Broadcasting Group, Inc., Raycom Media, Inc. (“TV Stations”) filed 04/10/2015
8. Monroe Electronics, Inc. (“Monroe”) filed 04/13/2015
9. Named State Broadcasters Associations (“State Associations”) filed 04/13/2015
10. Society of Broadcast Engineers, Incorporated (“SBE”) filed 04/09/2015

REPLY COMMENTS

1. National Association of Broadcasters (“NAB”)