

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

In the Matter of
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

MEMORANDUM OPINION AND ORDER

Adopted: May 25, 2018

Released: May 25, 2018

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address two petitions for waiver of Section 79.2(b)(2)(ii) of the Commission’s rules, which requires that emergency information provided visually during non-news-cast video programming be made audibly accessible to individuals who are blind or visually impaired through the use of a secondary audio stream (Audible Crawl Rule).1 First, we grant with conditions the American Cable Association’s (ACA) request for a permanent waiver of the Audible Crawl Rule for analog-only cable systems that lack the equipment needed to pass through audible emergency information via a secondary audio stream. We also grant the joint request of the American Council of the Blind (ACB), the American Foundation for the Blind (AFB), and the National Association of Broadcasters (NAB) (collectively, Joint Petitioners), to extend the existing waiver granted to television broadcasters of the requirement to aurally describe visual but non-textual emergency information, such as maps or other graphic displays, for an additional five years.

II. BACKGROUND

2. Congress, through the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), directed the Commission to identify methods to convey emergency information in a manner accessible to individuals who are blind or visually impaired, and to promulgate rules requiring video programming providers, distributors, and program owners to convey emergency information in a

1 See Petition for Waiver of the American Cable Association, MB Docket No. 12-107 (filed Mar. 9, 2018) (ACA Petition); Joint Petition for Extension of Waiver of the American Council of the Blind, the American Foundation for the Blind, and the National Association of Broadcasters, MB Docket No. 12-107 (filed Mar. 23, 2018) (Joint Petition); 47 CFR § 79.2(b)(2)(ii). The Media Bureau (Bureau) issued a Public Notice seeking comment on the ACA Petition on March 13, 2018, and a Public Notice seeking comment on the Joint Petition on March 26, 2018. See Media Bureau Seeks Comment on American Cable Association’s Petition for Waiver of Accessible Emergency Information Requirements, MB Docket No. 12-107, Public Notice, DA 18-246 (rel. Mar. 13, 2018); Media Bureau Seeks Comment on Joint Petition for Extension of Waiver of Accessible Emergency Information Requirements of the American Council of the Blind, the American Foundation for the Blind, and the National Association of Broadcasters, MB Docket No. 12-107, Public Notice, DA 18-298 (rel. Mar. 26, 2018).

manner accessible to individuals who are blind or visually impaired.<sup>2</sup> Pursuant to that directive, on April 8, 2013, the Commission issued the *Emergency Information Order*, which adopted a rule requiring that emergency information<sup>3</sup> provided visually during non-newscast programming be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide such information aurally.<sup>4</sup> The rule specifies that a video programming provider or video programming distributor<sup>5</sup> that creates visual emergency information content and adds it to a programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone.<sup>6</sup> In addition, video programming distributors are responsible for ensuring that the aural representation of the emergency information and the accompanying aural tone get passed through to consumers.<sup>7</sup> The rule applies to both visual emergency information content that is textual, *e.g.*, an on-screen crawl, and information that is non-textual, *e.g.*, maps or other graphic displays. If visual but non-textual emergency information is shown during non-newscast programming, the aural description of this information must accurately and effectively convey the critical details regarding the emergency and how to respond to the emergency.<sup>8</sup> The rule includes a compliance deadline of May 26, 2015.<sup>9</sup> With respect to textual emergency information, the Bureau granted NAB's request for a six-month waiver of

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<sup>2</sup> 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); 47 U.S.C. § 613(g)(1)-(2).

<sup>3</sup> "Emergency information" is defined in Section 79.2 of 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 CFR § 79.2(a)(2).

<sup>4</sup> *Id.* § 79.2(b)(2)(ii); *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 Order*).

<sup>5</sup> A "video programming provider" is "[a]ny video programming distributor 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." 47 CFR § 79.1(a)(13). A "video programming distributor" is "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, 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." *Id.* § 79.1(a)(11).

<sup>6</sup> *Id.* § 79.2(b)(2)(ii). *See also Emergency Information Order*, 28 FCC Rcd at 4899, para. 36.

<sup>7</sup> *Id.* § 79.2(b)(2)(ii). *See also Emergency Information Order*, 28 FCC Rcd at 4899-900, para. 36.

<sup>8</sup> *See Emergency Information Order*, 28 FCC Rcd at 4891-92, para. 24. "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 CFR § 79.2(a)(2).

<sup>9</sup> 47 CFR § 79.2(b)(2)(ii). *See also Emergency Information Order*, 28 FCC Rcd at 4900-01, para. 37.

the rule's deadline.<sup>10</sup> Therefore, broadcasters were required to be in compliance as of November 30, 2015 with the requirement to provide aurally on the secondary audio stream emergency information presented visually in text during non-news broadcast programming.

3. We evaluate the waiver requests in the petitions filed by ACA and Joint Petitioners, which are described in detail below, pursuant to the general waiver authority in Section 1.3 of the Commission's rules.<sup>11</sup> Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>12</sup>

### III. ACA PETITION

#### A. Background

4. On March 18, 2015, ACA filed a petition requesting that the Media Bureau waive the compliance deadline for the Audible Crawl Rule from May 26, 2015 until at least June 12, 2018 for analog-only systems that lack the equipment needed to pass through a secondary audio stream, with the opportunity to seek a further waiver from the Bureau, if still needed at that time.<sup>13</sup> The Bureau granted ACA's request on May 26, 2015, finding good cause to temporarily waive the Audible Crawl Rule for analog-only systems for approximately three years.<sup>14</sup> In the *2015 Waiver Order*, the Bureau noted that "analog-only cable systems may face unique difficulties in complying with the secondary audio stream pass-through requirement," because such systems are very small in size, often serve rural areas, and generally lack the financial and technological resources to pass through secondary audio streams.<sup>15</sup>

5. On March 9, 2018, ACA filed a second petition, this time requesting that the Bureau grant a permanent waiver of the Audible Crawl Rule, or in the alternative a five-year extension, for analog-only cable systems.<sup>16</sup> ACA argues that permanent waiver is appropriate because analog-only cable systems continue to lack the financial resources to upgrade existing equipment in a manner that would enable them to pass through secondary audio streams, and imposing the financial burden of

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<sup>10</sup> 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*, Memorandum Opinion and Order, 30 FCC Rcd 5012, 5021-22, para. 16 (2015) (*2015 Waiver Order*).

<sup>11</sup> 47 CFR § 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 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 analog-only systems that lack the equipment to pass through secondary audio streams. *Emergency Information Order*, 28 FCC Rcd at 4887-88, 4932, paras. 20, 99. See 47 CFR §§ 0.61, 0.283, and 1.3.

<sup>12</sup> *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).

<sup>13</sup> See American Cable Association, Petition for Waiver, MB Docket Nos. 12-107, 11-43 (filed Mar. 18, 2015). ACA also requested at that time a waiver for hybrid analog/digital systems that lack the equipment needed to pass through secondary audio streams on their analog service, and the Bureau granted with conditions ACA's request to permit an alternate means of compliance with the pass-through requirement for such systems. *2015 Waiver Order*, 30 FCC Rcd at 5014-15, paras. 4-5.

<sup>14</sup> *2015 Waiver Order*, 30 FCC Rcd at 5018-20, paras. 11-12.

<sup>15</sup> *Id.* at 5018, para. 11.

<sup>16</sup> ACA Petition at 5-8.

compliance would force such systems to go out of business—resulting in a loss of service.<sup>17</sup> San Antonio Lighthouse for the Blind & Vision Impaired filed comments opposing ACA’s waiver request.<sup>18</sup>

## B. Discussion

6. We find that there is good cause to grant ACA’s request for a permanent waiver of compliance with the Audible Crawl Rule for the remaining analog-only systems that lack the equipment needed to pass through a secondary audio stream, subject to the conditions stated below. When the Bureau granted a temporary waiver for such systems in 2015, it observed that analog-only cable systems frequently provide a value-priced option for subscribers needing only basic service, and that the per-subscriber costs on these very small systems to upgrade equipment might cause them to shut down.<sup>19</sup> Because analog-only systems generally lack financial resources and utilize dated technology, the Bureau agreed with ACA that it would be financially infeasible for these systems to purchase new equipment with the capability of passing through a secondary audio stream by the initial compliance deadline.<sup>20</sup>

7. Based on the updated information submitted in ACA’s Petition, we believe that the case for a waiver for analog-only systems has become more compelling and justifies permanent relief for such systems. As ACA notes, the number of remaining analog-only systems has dropped significantly since the Bureau granted the *2015 Waiver Order*, and it continues to decline.<sup>21</sup> Of the 987 all-analog ACA member systems that were serving 203,000 subscribers (in the aggregate) in 2013, only 455 systems remain today, serving approximately 62,000 subscribers.<sup>22</sup> ACA posits that this small class of systems still lacks the necessary equipment to comply with the Audible Crawl Rule as well as the financial resources necessary to purchase such equipment.<sup>23</sup> It maintains that requiring them to comply with the rule would cause operators to prematurely close such systems, given “their poor and deteriorating financial health.”<sup>24</sup> We find persuasive ACA’s contention that the imposition of the financial burdens associated with compliance would force the remaining analog cable systems to shut down prematurely, resulting in a loss to existing customers without expanding accessibility options for persons who are blind or visually impaired.<sup>25</sup> We therefore find that special circumstances justify permanent relief for this small class of cable systems.

8. We further find that a permanent waiver serves the public interest because it will allow the remaining number of analog-only systems to sustain continued operations and provide service to subscribers, before they eventually cease operations or transition to digital or hybrid analog/digital

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<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> Comments of San Antonio Lighthouse for the Blind & Vision Impaired, at 1 (Mar. 19, 2018) (San Antonio Lighthouse Comments).

<sup>19</sup> *2015 Waiver Order*, 30 FCC Rcd at 5018-19, para. 11.

<sup>20</sup> *Id.* at 5018, para. 11.

<sup>21</sup> ACA Petition at 5-6. ACA explains that many operators of analog-only systems were able to upgrade their systems to digital or hybrid analog/digital over the last three years, which brought them into compliance with the audible emergency information pass-through requirement, while other operators of analog-only systems closed during this same period. *Id.* at 4.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* See also *id.* at 10 (“Those operators with the most financial resources have found a way to come into compliance, while those that could not upgrade are in worse financial shape as a class than those that needed relief in 2015.”).

<sup>25</sup> *Id.* at 9-10.

technology.<sup>26</sup> Those systems that do eventually transition to digital technology will then have the capability to pass through a secondary audio stream with audible emergency information and will be obligated to do so pursuant to the Audible Crawl Rule. Other systems will remain all-analog until they are ultimately shut down by their owners, and grant of a permanent waiver will prolong the time such systems can stay in operation.<sup>27</sup> Although one commenter, San Antonio Lighthouse for the Blind & Vision Impaired, argues generally that ACA should not be granted a permanent waiver because of “the critical need for blind individuals to receive emergency information,”<sup>28</sup> we emphasize that this waiver is limited to a narrow class of analog-only systems that serve a very small and dwindling number of subscribers.<sup>29</sup> We agree with San Antonio Lighthouse for the Blind & Vision Impaired that it is of vital importance that consumers who are blind or visually impaired be provided with accessible emergency information and, thus, we reserve the right to revoke this waiver if technology develops in such a way that analog systems become capable of complying with the Audible Crawl Rule in the future.

9. We find it is appropriate to mandate that ACA continue the notice requirement established in the *2015 Waiver Order*,<sup>30</sup> as edited below. We require that an analog-only system relying on the permanent waiver established by this *Order* must provide the following notice in accessible form to all current and potential customers:<sup>31</sup>

**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 must be provided in an accessible manner by **[Insert Name of Cable Operator]** to all subscribers of this system on the regular audio stream. For

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<sup>26</sup> See *id.* at 6. According to SNL Kagan, almost 97 percent of cable video customers subscribe to digital service, and all major operators provide digital service. S&P Global Market Intelligence, *Top Cable MSO's Report* (accessed May 18, 2018) (showing that every multiple-system cable operator with at least 2,500 subscribers offers digital service). See also *Cable Television Technical and Operational Standards*, Report and Order, 32 FCC Rcd 7754, 7755, para. 3 (2017). Digital service is superior to analog service, and therefore the Commission has encouraged cable operators to make that transition. See, e.g., *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Fifth Report and Order, 27 FCC Rcd 6529, 6543, para. 16 (2012); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility between Cable Systems and Consumer Electronics Equipment*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, 14679-14681, paras. 45-49 (2010).

<sup>27</sup> ACA Petition at 5-6.

<sup>28</sup> San Antonio Lighthouse Comments at 1. Further, although San Antonio Lighthouse for the Blind and Vision Impaired contends that technical problems and cost are not sufficient grounds for waiver, *see id.*, we find that the possibility that incurring these costs would cause many of these operators to shut down justifies a permanent waiver in these limited circumstances.

<sup>29</sup> See ACA Petition at 7.

<sup>30</sup> *2015 Waiver Order*, 30 FCC Rcd at 5019, para. 12. See also ACA Petition at 2, n.1 (supporting continued compliance with the condition that analog-only systems subject to the waiver provide notice on an annual basis to current and potential customers that emergency information will not be audibly accessible on the secondary audio stream).

<sup>31</sup> 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 CFR § 1320.3(c)(2).

more information, contact [Insert Name of Cable Operator] at [Insert Phone Number and Email of Cable Operator].

First, we require that analog-only systems continue to provide this notice annually to current customers for as long as the system chooses to rely on the waiver granted by this *Order*. Although we do not mandate a specific means for satisfying this annual notice requirement, we require the cable system to provide this targeted notice by directly contacting customers, such as via a billing statement or billing insert, or 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 the requirement to provide notice to customers who inquire about accessibility options, a cable system could do so by directing customers to a notice on its website (if applicable) or to information in its marketing materials, or by having customer service representatives provide the information directly. If we find that consumers are not being adequately informed about the waiver for analog-only cable systems, we may revisit whether the waiver should continue.

#### IV. ACB/AFB/NAB JOINT PETITION

##### A. Background

10. On March 27, 2015, NAB filed its initial petition for waiver of the requirement to aurally describe visual but non-textual emergency information to allow the broadcast industry time to develop a technical solution for compliance.<sup>32</sup> NAB explained that a waiver for television broadcasters was warranted because an automated solution to aurally describe radar maps and other moving graphics (which do not contain text files that can be converted to speech) was not yet available.<sup>33</sup> On May 26, 2015, the Media Bureau granted NAB's request, finding that a waiver of the requirement to pass through non-textual visual information would not unduly disrupt the availability of emergency information while the industry developed a reliable technical solution, but it limited the waiver to 18 months as requested by AFB and ACB.<sup>34</sup> On November 16, 2016, the Bureau granted a joint request of ACB, AFB, and NAB to further extend this waiver for an additional 18 months.<sup>35</sup>

11. In their Petition, Joint Petitioners explain that efforts to develop an automated approach to aurally describing visual, non-textual emergency information remain unfruitful, despite their collaboration and efforts to identify a solution during the current 18-month extension.<sup>36</sup> Joint Petitioners contend that retaining the current compliance deadline "will force local news teams to remove maps and other graphics from news alerts, rather than trying to implement complex workarounds to manually describe graphics," to avoid the risk of Commission enforcement.<sup>37</sup> Joint Petitioners request a five-year extension of the waiver to allow time for the broadcast industry to transition to new technologies with a greater potential for integrating a technical solution for compliance.<sup>38</sup> No commenter in the docket has opposed the Joint Petition.

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<sup>32</sup> Petition for Temporary Partial Exemption and Limited Waiver of the National Association of Broadcasters, MB Docket No. 12-107, at 9-11 (Mar. 27, 2015).

<sup>33</sup> *See id.*

<sup>34</sup> *2015 Waiver Order*, 30 FCC Rcd at 5022-23, para. 17.

<sup>35</sup> *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*, Memorandum Opinion and Order, 31 FCC Rcd 12540 (2016) (*2016 Waiver Order*). *See also* Joint Petition for Extension of Limited Waiver of the American Council of the Blind, the American Foundation for the Blind, and the National Association of Broadcasters, MB Docket No. 12-107 (filed Sept. 2, 2016).

<sup>36</sup> Joint Petition at 2, 5-7.

<sup>37</sup> *Id.* at 4, 9.

<sup>38</sup> *Id.* at 3.

12. The Commission received a recommendation on this matter from the Video Programming Subcommittee of the Commission's Disability Advisory Committee (DAC).<sup>39</sup> The DAC found that there are no solutions available to ensure timely, accurate, and reliable descriptions of images and dynamic video displayed as part of an emergency information crawl over existing legacy broadcast systems for the foreseeable future, and recommended that the Commission extend the existing waiver for five years to allow time for the industry to develop a technical solution.<sup>40</sup>

## B. Discussion

13. We find that there is good cause to waive the requirement that broadcasters aurally describe visual but non-textual emergency information for an additional five-year period ending May 26, 2023. While we emphasize the importance of making emergency information accessible to persons who are blind or visually impaired, we recognize that the broadcast industry is still without a clear solution to ensure timely, accurate, and reliable descriptions of images and dynamic video conveying visual emergency information over existing broadcast systems. Joint Petitioners represent that, over the last 36 months, the broadcast industry has looked both internally and externally, directly engaging members of the blind and vision-impaired communities, and despite these collective efforts all parties are unable to identify a technical solution to automatically convert images and dynamic video into speech.<sup>41</sup> Most notably, this dilemma is acknowledged by the disability community both through the support of ACB and AFB, and the recommendations of the DAC, which comprises a diverse group of stakeholders with interest in accessibility issues. We note that a five-year extension of the waiver is consistent with the DAC's recommendation and that no party opposes Joint Petitioners' request for a five-year extension.<sup>42</sup> Joint Petitioners indicate that broadcasters, accessibility advocates, and other stakeholders will continue to work toward the development of a technical solution during a five-year extension period.<sup>43</sup> Based on these representations, we conclude that special circumstances warrant a further temporary waiver from this aspect of the Audible Crawl Rule and that affording interested parties additional time to develop a technical means to ensure compliance in the future will serve the public interest.

14. In granting this additional waiver period, we note that the record indicates that, in most cases, the critical details of an emergency provided in graphic form are duplicative of information conveyed in textual crawls, which are already aurally described and accessible to individuals who are blind or visually impaired. As NAB explains, "[b]roadcasters nearly always display radar maps only to clarify or reinforce the verbal message being delivered, rather than to provide separate information."<sup>44</sup> In the *Emergency Information Order*, the Commission found that if visual but non-textual emergency information is shown during non-newscast programming, the aural description of this information must

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<sup>39</sup> See *Disability Advisory Committee Announcement of Date, Time and Agenda of Next Meeting and Designation of New Designated Federal Officer*, Public Notice, 33 FCC Rcd 976, 976-77 (2018); *2015 Waiver Order*, 30 FCC Rcd at 5022, para. 17 & n.70.

<sup>40</sup> Recommendation of the Disability Advisory Committee, Best Practices for Graphical Emergency Alerts, MB Docket No. 12-107 (Feb 28, 2018) (DAC Recommendation). The DAC also recommended that consumer groups and industry leaders work together in the interim "to ensure that best practices are communicated to stations for potential use when stationary and dynamic images displaying emergency information are broadcast" in accordance with the Commission's accessible emergency information rule. *See id.* at 2.

<sup>41</sup> Joint Petition at 5-6.

<sup>42</sup> *Id.* at 3; *supra* note 40.

<sup>43</sup> Joint Petition at 3. Joint Petitioners contend "that future generations of broadcast technology, such as ATSC 3.0 may be able to deploy applications capable of describing graphic video content, although implementation may not be possible in the foreseeable future." *Id.* at 7.

<sup>44</sup> *Id.* at 8 (quoting Joint Comments of the Named State Broadcasters Association, MB Docket Nos. 12-107 and 11-43, at 4-5 (Apr. 13, 2015)). *See also* DAC Recommendation at 2 (noting that "the Committee [was] unable to find instances where the critical details were only conveyed via image or dynamic video image -- although the finding of no such examples does not mean such instances are impossible").

accurately and effectively convey the critical details of the emergency and how to respond.<sup>45</sup> Thus, if the critical information conveyed in radar maps and other graphic images is duplicative of emergency information that is provided in a crawl (and transmitted aurally on a secondary audio stream), broadcasters do not need to take further steps to be in compliance.<sup>46</sup> However, where a graphic display conveys critical details of an emergency and how to respond that are *not* included in the on-screen text crawl, the broadcaster must make the information audibly accessible via a secondary audio stream at the expiration of the waiver period. Although we continue to believe that an automated solution is preferable to a manual approach that requires station personnel to describe every graphic,<sup>47</sup> compliance with the Audible Crawl Rule is not predicated on the advent of such technology. We strongly encourage broadcasters to ensure that the critical details of graphically displayed emergency information are provided through non-automated means whenever possible during the pendency of this waiver.

15. In addition, to better serve the public interest and to help ensure the development of a long-term solution to the problem presented in the Joint Petition, we require NAB to submit a status report at the midpoint of the five-year waiver period. NAB must provide this status report to the Media Bureau and the Consumer and Governmental Affairs Bureau by November 25, 2020.<sup>48</sup> Such report shall detail the extent to which broadcasters have made progress in finding accessible solutions or alternatives to providing critical emergency details generally delivered in a graphic format, as well as the extent to which this waiver continues to be necessary. NAB may accomplish this, for example, by monitoring an appropriate sample size of broadcasters and determining the number or percentage of instances among this sample where a radar map or other graphic information used during the presentation of emergency information conveys critical details *that are not* provided in a crawl. The report should also detail NAB's continued efforts to engage members of the disability community and to, in consultation with the disability community, educate broadcasters on best practices for identifying and providing textual information of the critical details of an emergency when non-textual images displaying emergency information are broadcast. Next, the report should include information about the development of automated solutions for complying with the requirement to aurally describe visual, non-textual emergency information, if any are in fact developed, such as use of artificial intelligence (AI) frameworks or application programming interfaces (APIs). Finally, if, at the time of the report's submission, the industry has been unable to identify an automated technical solution,<sup>49</sup> or if the industry, in consultation with the disability community, determines that there is a preferred alternative to an automated technical solution, the report should explain what steps are being or will be taken, using such alternative solution, to ensure that viewers who are blind or visually impaired will have access to the same critical details that are provided in a non-textual manner.

## V. ORDERING CLAUSES

16. 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 CFR §§ 0.61, 0.283, and 1.3, this

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<sup>45</sup> *Emergency Information Order*, 28 FCC Rcd at 4891-92, para. 24. At that time, the Commission found that the record did not support a finding that requiring covered entities to provide an aural description of the critical details provided in a graphic display for the purpose of conveying emergency information (*e.g.*, a list of the counties, cities, or other locations affected by the emergency as shown on a map) would be overly burdensome. *Id.*

<sup>46</sup> *2016 Waiver Order*, 31 FCC Rcd at 12544, para. 10.

<sup>47</sup> *Id.* at 12544, para. 9.

<sup>48</sup> The status report should be filed electronically using the Commission's Electronic Comment Filing System (ECFS) in MB Docket No. 12-107, with copies submitted via email to Martha Heller, Chief, Policy Division, Media Bureau, Martha.Heller@fcc.gov, and Suzy Rosen Singleton, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Suzanne.Singleton@fcc.gov.

<sup>49</sup> See *supra* note 43 (noting Joint Petitioners' uncertainty about the extent to which implementation of applications capable of describing graphic video content will be possible in the foreseeable future).

Memorandum Opinion and Order IS ADOPTED.

17. **IT IS FURTHER ORDERED** that the petition for waiver of Section 79.2(b)(2)(ii) of the Commission's rules, 47 CFR § 79.2(b)(2)(ii), filed by the American Cable Association IS GRANTED, subject to the conditions described herein.

18. **IT IS FURTHER ORDERED** that the joint petition for waiver of Section 79.2(b)(2)(ii) of the Commission's rules, 47 CFR § 79.2(b)(2)(ii), filed by the American Council of the Blind, the American Foundation for the Blind, and the National Association of Broadcasters IS GRANTED, subject to the conditions described herein.

19. 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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau