

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

In the Matter of)
)
Implementation of Video Description of) MM Docket No. 99-339
Video Programming)
)
)

WAIVER ORDER

Adopted: October 26, 2001

Released: November 2, 2001

By the Commission:

1. With this *Order*, we clarify that the Commission’s emergency information rules, 47 C.F.R. § 79.2(b)(1)(iii), require that broadcasters or multichannel video programming distributors (MVPDs) accompany *each* “crawl” or “scroll” of emergency information with an aural tone. We grant a limited waiver of this aural tone requirement to MVPDs that receive emergency information warnings from The Weather Channel (TWC) via Weather Star III and Weather Star Jr. computers.

2. On August 7, 2000, the Commission released its *Video Description Report and Order* in which it adopted rules requiring broadcasters and other video programming distributors to provide video description and to make emergency information more accessible to visually impaired viewers.¹ The Commission’s emergency information rules provide, among other requirements, that “[e]mergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.”²

3. On December 20, 2000, TWC filed a letter requesting that we clarify that, in certain circumstances, it is in compliance with our emergency information rules when it provides an aural tone prior to the first time that it provides a particular crawl or scroll containing emergency information.³ TWC thus seeks clarification that it need not accompany *each* otherwise identical crawl or scroll with an aural

¹ Implementation of Video Description of Video Programming, MM Docket No. 99-339, *Video Description Report and Order*, 15 FCC Rcd 15230, 15251 at ¶ 51 (2000), *on recon.*, 16 FCC Rcd 1251 (2001), *appeal pend.*, *Motion Picture Association of America et al. v. FCC*, No. 01-1149 (D.C. Cir. filed Mar. 28, 2001); *National Federation of the Blind v. FCC*, No. 01-1155 (D.C. Cir. filed Apr. 2, 2001) (consolidated). No parties sought reconsideration of the rules regarding emergency information.

² 47 C.F.R. § 79.2(b)(1)(iii). Our amended emergency information rules were effective upon approval of the Office of Management and Budget (OMB) on February 1, 2001 (OMB No. 3060-0967). *See* Public Notice, DA 01-799 (rel. March 30, 2001).

³ Letter on behalf of The Weather Channel (TWC) to Roy J. Stewart, Chief, Mass Media Bureau, Federal Communications Commission (filed December 20, 2000).

tone. In the alternative, TWC seeks an exemption from the rules because it asserts that accompanying each crawl or scroll with an aural tone would require replacing equipment on some of their systems at a cost of over \$34 million. This, it contends, would constitute an undue burden, exempting it from any video description requirements pursuant to Section 79.3(d) of our rules.

4. TWC is a national weather service that provides text-only reproductions of emergency weather bulletins released by the National Weather Service and certain state emergency management agencies. TWC distributes these warnings to MVPDs through its Weather Stars, a system of more than 9,000 fully automated, graphic and/or text computers located at cable headends throughout the United States that download and display the bulletins to the relevant geographic audiences.⁴ TWC reports that it issues approximately 150,000 weather warnings and advisories each year, “far more than any local broadcaster or other MVPD.” It notes, however, that its viewers often switch to their local broadcast stations for information regarding emergency weather situations because they know that these stations provide local details about safety and the protection of property.⁵

5. TWC states that it uses four different generations of Weather Stars. It reports that the Weather Stars that cover more than 93% of its subscribers produce an aural tone each time a crawl or scroll containing emergency information is provided. However, for a small percentage (4%, or 2.9 million) of its subscribers, where the older Weather Star IIIs are in use, TWC is only able to provide an aural tone the first time a particular crawl or scroll containing emergency information is aired. It states that by 2003/2004 all Star IIIs will be replaced by more advanced products that will produce an aural tone with each warning.⁶ For an even smaller percentage (2.5% or 1.8 million) of its subscribers, the Weather Star Jrs. in use cannot provide an aural tone.⁷ TWC states that it is able to upgrade the Star Jrs. to provide a tone before the first time a particular crawl or scroll is transmitted, which will cost approximately \$1 million⁸ and take six to ten months to accomplish.⁹ TWC requests a short term waiver of our emergency information rules until such time as it can complete the upgrades.¹⁰ TWC contends, however, that it is unable to modify the Weather Star IIIs or the Star Jrs. to provide an aural tone *each* time a crawl or scroll is transmitted, and that replacing these two systems to provide an aural tone with each transmission of an emergency warning would cost more than \$34 million.¹¹ By way of comparison, TWC notes that the

⁴ Letter of TWC at 1-2.

⁵ Letter of TWC at 4.

⁶ Letter of TWC at 2.

⁷ Letter of TWC at 2.

⁸ Letter of TWC at 3-4.

⁹ Letter of TWC at 3, n. 4.

¹⁰ Letter of TWC at 3, n. 4.

¹¹ Letter of TWC at 3.

National Cable Television Association (NCTA) has estimated that the cost of complying with our *video description* rules for a typical cable network would be between \$100,000 and \$200,000.¹²

6. On February 7, 2001, we released a Public Notice seeking comment on TWC's request for clarification. We received two e-mail comments opposing its request.¹³ One commenter (Butler) contends that TWC should provide an aural tone every time that it provides a scroll or crawl that provides emergency information, arguing that producing a tone the second time the same scroll or crawl is aired should not be an undue burden.¹⁴ The other commenter (Fenster) contends that allowing two to three years for replacing the Star IIIs is excessive in light of the safety needs of the 2.9 million people served by the Star IIIs. Fenster argues that compliance with existing Commission regulations is part of the cost of doing business, suggesting that the Commission should limit TWC to a period of one year to 18 months to comply with the emergency information rules.¹⁵

7. As an initial matter, we clarify that we interpret our emergency information rules as requiring that *each* "crawl" or "scroll" of emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, be accompanied with an aural tone. Although we believe that this interpretation is implicit in our rules, we take this opportunity to forestall any confusion regarding the requirements of our emergency information rules.

8. Secondly, we note that our Video Description decision held programming distributors, rather than programming networks or producers, responsible for rule compliance.¹⁶ Because it is a programming network rather than a program distributor, TWC is not directly responsible for compliance with the video description rules, including the provision on emergency announcements. However, we also stated that we expected that program distributors would incorporate video description requirements into their contracts with program producers and that the parties would negotiate for an efficient allocation of

¹² Letter of TWC at 4, *citing* Comments of NCTA at 14-15, in *Video Description Report and Order*, 15 FCC Rcd 15230, 15236 n. 37 (NCTA estimates that it would cost between \$100,000 and \$200,000 for cable networks that cannot currently support a third audio channel to upgrade their facilities to do so).

¹³ E-mail letter to the FCC Consumer Information Bureau Disability Rights Office from Carol-Lynn M. Fenster (February 9, 2001)(Fenster); E-mail letter to the FCC Consumer Information Bureau Disability Rights Office from Mary Butler, Advocacy & Outreach Coordinator of the Linking Employment Abilities & Potential program, Center for Independent Living, Elyria, Ohio (February 27, 2001)(Butler).

¹⁴ Letter of Butler, *supra*.

¹⁵ Letter of Fenster, *supra*.

¹⁶ Specifically, distributors responsible for rule compliance include broadcast stations in the top 25 Nielsen Designated Market Areas (DMAs) affiliated with the top four commercial broadcast networks, ABC, CBS, Fox and NBC, as well as MVPDs that serve 50,000 or more subscribers. *Video Description Report and Order*, *supra* at 15238, n. 52; *Video Description Memorandum Opinion and Order*, *supra* at 1254.

video description responsibilities.¹⁷ Accordingly, based upon TWC's representations, we issue this *Order* to provide program distributors equipped by TWC with Weather Star III and Star Jr. equipment with a waiver of the aural tone requirement of the emergency information rules to the extent set forth below.

9. TWC's description of the difficulty and expense that would be involved in providing an aural tone with every crawl or scroll of emergency information that it transmits to subscribers served by Weather Star IIIs and Star Jrs. is uncontroverted.¹⁸ When the Commission adopted the emergency information rules, it did not envision that any parties would have to make large capital expenditures to comply with the rules.¹⁹ Expecting TWC to provide its MVPDs with a tone with every transmission within one year to 18 months would, according to TWC, require an expenditure of \$34 million, a figure that has not been disputed by any party. This would constitute a large capital expenditure, especially as it plans to replace all Star IIIs by 2003/2004. We therefore believe that it would be an undue burden to require MVPDs equipped with Weather Star IIIs to comply with the aural tone requirement of the emergency information rules before those computers are replaced by TWC in 2003/2004. With respect to the Star Jrs., TWC is willing to expend \$1 million to give them the functionality of the Star IIIs, which provide a tone the first time a crawl or scroll of emergency information is transmitted. Based upon TWC's representations concerning the costs of complying with our aural tone requirement, its intention to replace the Star IIIs in 2003/2004, and its intention to upgrade the Star Jrs. to provide an initial aural tone, we believe that it is reasonable to grant the MVPDs that carry TWC via Star IIIs or Star Jrs. a limited waiver of our emergency information rules, which became effective on February 1, 2001, to accomplish these upgrades and replacements.

10. We therefore grant MVPDs that receive emergency information from TWC via Weather Star IIIs a waiver of the requirement of our emergency information rules that they provide an aural tone before each crawl or scroll of emergency information until December 31, 2004, by which time TWC states that it will have replaced the Weather Star IIIs with computers that provide an aural tone prior to every scroll or crawl containing emergency information. In addition, we grant MVPDs that receive emergency information from TWC via Weather Star Jrs. a six-month waiver of our emergency information rules, dating from release of this *Order*, to allow TWC to upgrade its Star Jr. computers to provide an aural tone the first time a particular crawl or scroll of emergency information is transmitted.

11. Upgraded Weather Star Jr. computers will have the functionality of the Star IIIs, providing an aural tone the first time a particular scroll or crawl containing emergency information is transmitted. We find it reasonable to grant MVPDs that receive emergency information from TWC via upgraded

¹⁷ *Video Description Memorandum Opinion and Order*, *supra* at 1254.

¹⁸ Although Butler questions TWC's assertions, she offers no evidence to contradict them. Letter of Butler, *supra*.

¹⁹ *Video Description Report and Order*, 15 FCC Rcd 15320, 15251 at ¶ 52 (2000) (adoption of an earlier effective date for the emergency information rules because of the importance of emergency information, and because there should be little if any equipment and infrastructure costs associated with compliance).

Weather Star Jrs. the same waiver, until December 31, 2004, as those MVPDs that receive their information via Star IIIs. If TWC does not intend to replace the Star Jrs. by this date, either TWC or MVPDs equipped with Star Jrs. may request an extension of this waiver.

12. It will be incumbent upon MVPDs equipped with Star IIIs or Star Jrs. to apprise us of any need for extension of these waivers.

13. ACCORDINGLY, IT IS ORDERED that a limited waiver of the aural tone requirement of the Commission's emergency information rules, as set forth herein, IS GRANTED to multichannel video programming distributors that receive emergency information warnings from The Weather Channel via Weather Star III and Weather Star Jr. computers. For additional information concerning this proceeding, please contact Jane Gross, Mass Media Bureau, (202) 418-2130.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary