

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

In the Matter of)
)
 Accessible Emergency Information, and Apparatus)
 Requirements for Emergency Information and) MB Docket No. 12-107
 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) MB Docket No. 11-43
 Accessibility Act of 2010)

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioners Clyburn, Rosenworcel and Pai issuing separate statements;
Commissioner McDowell not participating.

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I. INTRODUCTION

1. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),¹ this *Report and Order* adopts rules requiring that emergency information² 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. Section 202 of the CVAA directs the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners³ to convey emergency information in a manner accessible to individuals who are blind or visually impaired.⁴ The *Report and Order* implements

¹ 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 foregoing are collectively referred to herein as the CVAA. The CVAA was enacted on October 8, 2010.

² The CVAA directed the Federal Communications Commission (“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).

³ Section 79.1 of the Commission’s rules defines the terms “video programming distributor” and “video programming provider.” 47 C.F.R. §§ 79.1(a)(2)-(3). It does not define the term “program owner.”

⁴ 47 U.S.C. § 613(g)(2).

this mandate by requiring the use of a secondary audio stream⁵ to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts, for example, in an on-screen crawl.⁶ This requirement, which has widespread industry support, will serve the public interest by ensuring that televised emergency information is accessible to individuals who are blind or visually impaired. Further, as directed by Section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description⁷ services and accessible emergency information.⁸ Specifically, as explained in more detail below, the apparatus rules require that certain apparatus make available the secondary audio stream, which is currently used to provide video description and which will be used to provide aural emergency information. The apparatus requirements will benefit individuals who are blind or visually impaired by ensuring that apparatus on which consumers receive, play back, or record video programming are capable of accessing emergency information and video description services. We understand that most apparatus subject to the rules already comply with these requirements. As discussed in Section III below, we adopt emergency information requirements for video programming distributors, video programming providers, and program owners pursuant to Section 202(a) of the CVAA. Specifically, we adopt rules that will:

- Clarify that the new emergency information requirements apply to video programming provided by entities that are already covered by Section 79.2 of the Commission's rules – *i.e.*, broadcasters, MVPDs, 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;
- Require that covered entities make an aural presentation of emergency information that is provided visually in non-newscast programming available on a secondary audio stream;
- Continue to require the use of an aural tone to precede emergency information on the main program audio, and now also require use of the aural tone to precede emergency information on the secondary audio stream;
- Permit, but do not require, the use of text-to-speech (“TTS”) technologies as a method for providing an aural rendition of emergency information, and impose qualitative requirements if TTS is used;
- Require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full;
- Require that emergency information supersede all other programming on the secondary audio stream;
- Decline to make any substantive revisions to the current definition of emergency information, but clarify that severe thunderstorms and other severe weather events are included within the current definition;
- Revise the emergency information rule, as required by the statute, to include video programming providers (which includes program owners) as parties responsible for making emergency

⁵ 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.

⁶ See *infra* Section III.B.1.

⁷ “Video 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).

⁸ 47 U.S.C. §§ 303(u), (z), 330(b). See *infra* Section IV.A.

information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors, and to allocate responsibilities among covered entities;

- Adopt a compliance deadline of two years from the date of *Federal Register* publication for compliance with the emergency information rules adopted herein; and
- Grant waivers to The Weather Channel, LLC (“The Weather Channel”) and DIRECTV, LLC (“DIRECTV”) to provide them with additional time and flexibility to come into compliance with the rules adopted herein with regard to the provision of local weather alerts during The Weather Channel’s programming via devices that are not currently capable of providing aural emergency information on a secondary audio stream.

2. As discussed in Section IV below, we adopt apparatus requirements for emergency information and video description pursuant to Section 203 of the CVAA. Specifically, we adopt rules that will:

- Require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available, because such streams are the existing mechanism for providing video description and the new mechanism for making emergency information accessible;
- Decline at this time to adopt specific performance and display standards or policies addressing certain issues from the 2011 video description proceeding;
- Permit, but do not require, covered apparatus to contain TTS capability;
- Limit applicability of the apparatus requirements, at this time, to apparatus designed to receive, play back, or record video programming provided by entities subject to Sections 79.2 and 79.3 of our rules;
- Apply the apparatus requirements to removable media players, but not to professional and commercial equipment or display-only monitors;
- Find that the apparatus requirements adopted herein apply to mobile digital television (“mobile DTV”) apparatus because such apparatus make available mobile DTV services, which are provided by television broadcast stations subject to Sections 79.2 and 79.3 of our rules;
- Implement the statutory provision that permits alternate means of compliance;
- Adopt a compliance deadline of two years from the date of *Federal Register* publication for compliance with the apparatus rules adopted herein; and
- Adopt procedures for complaints alleging violations of the apparatus requirements adopted herein.

3. As discussed in Section V below, we issue a *Further Notice of Proposed Rulemaking* (“*Further Notice*”) that:

- Explores whether a multichannel video programming distributor (“MVPD”) service is covered by the emergency information rules adopted herein when an MVPD, as defined in the Commission’s rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams; and

- Explores whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.

II. BACKGROUND

4. Section 202 of the CVAA directs the Commission to “identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or visually impaired.”⁹ Pursuant to this section, the Commission must also “promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.”¹⁰ In addition, Section 203 of the CVAA directs the Commission to prescribe rules requiring certain apparatus on which consumers receive or play back video programming to have the capability to decode and make available emergency information and video description services in a manner accessible to individuals who are blind or visually impaired, and requiring certain apparatus designed to record video programming to enable the rendering or pass through of video description signals and emergency information.¹¹

5. The CVAA directed the Chairman of the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”),¹² which was directed to develop a report that identifies performance objectives and recommends technical standards and other necessary regulations for the provision of emergency information and video description.¹³ The VPAAC’s members include representatives from the industry and from consumer groups, and its recommendations thus reflect, in many cases, a consensus among regulated entities and consumers. The VPAAC submitted its statutorily mandated report addressing video description and emergency information to the Commission on April 9, 2012.¹⁴ The Commission released the *NPRM* in this proceeding in November 2012.¹⁵ In the *NPRM*, the Commission provided detailed background information regarding the

⁹ 47 U.S.C. § 613(g)(1).

¹⁰ *Id.* § 613(g)(2).

¹¹ *Id.* §§ 303(u)(1), (z)(1).

¹² Pub. L. No. 111-260, § 201(a). Although the CVAA refers to this advisory committee as the “Video Programming and Emergency Access Advisory Committee,” the Commission shortened its working name to the “Video Programming Accessibility Advisory Committee” to avoid confusion with the “Emergency Access Advisory Committee” established under Section 106 of the CVAA.

¹³ *Id.* § 201(e)(2). Section 201(e)(2) also required the report to include information related to user interfaces and video programming guides and menus, which is part of a separate Commission rulemaking proceeding that addresses Sections 204 and 205 of the CVAA. See Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, 27 FCC Rcd 4191 (2012) (“*Sections 204 and 205 Public Notice*”).

¹⁴ See Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, available at <http://vpaac.wikispaces.com> (“VPAAC Second Report”). The portion of the report that addresses video description is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf> (“VPAAC Second Report: Video Description”). The portion of the report that addresses access to emergency information is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Access+to+Emergency+Information+REPORT+AS+SUBMITTED+4-9-2012.pdf> (“VPAAC Second Report: Access to Emergency Information”).

¹⁵ 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*, (continued....)

applicable provisions of the CVAA, the VPAAC Second Report, and the current rules applicable to televised emergency information and video description, which we need not repeat here.¹⁶ The CVAA requires the Commission to complete its emergency information proceeding within one year of the submission of the VPAAC Second Report and to prescribe the apparatus requirements for video description and emergency information within 18 months of the submission of the VPAAC Second Report.¹⁷

6. To fulfill these statutory mandates, we adopt the rules discussed below. These rules impose new requirements with regard to the accessibility of televised emergency information for consumers who are blind or visually impaired, as well as new video description and emergency information requirements with regard to the apparatus consumers use to receive, play back, and record video programming. By ensuring the accessibility of emergency information and the availability of accessible emergency information and video description services, the regulations adopted here further the purpose of the CVAA to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”¹⁸

III. SECTION 202 OF THE CVAA

A. Scope of the Emergency Information Rules

7. At the outset, we determine that the emergency information requirements adopted in this proceeding will apply to video programming¹⁹ subject to Section 79.2 of the Commission’s rules that is provided by a covered entity, *i.e.*, video programming provided by television broadcast stations licensed by the Commission,²⁰ MVPDs, and “any other distributor of video programming for residential reception (Continued from previous page) _____

Notice of Proposed Rulemaking, 27 FCC Rcd 14728 (2012) (“*NPRM*”). In April 2012, the Media Bureau and the Consumer and Governmental Affairs Bureau issued a Public Notice seeking comment on the portions of the VPAAC Second Report that address emergency information and video description, and the comments and reply comments received in response to the Public Notice helped inform the *NPRM*. Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: Video Description and Access to Emergency Information*, 27 FCC Rcd 4195 (2012).

¹⁶ See *NPRM*, 27 FCC Rcd at 14729-33, ¶¶ 2-5.

¹⁷ 47 U.S.C. § 613(g); Pub. L. No. 111-260, § 203(d)(2). As noted, the VPAAC submitted its report to the Commission on April 9, 2012. Accordingly, the deadline for the emergency information proceeding is April 9, 2013, and the deadline for prescribing apparatus requirements is October 9, 2013.

¹⁸ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010) (“House Committee Report”); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010) (“Senate Committee Report”).

¹⁹ The Commission’s rules state that “the definitions in §§79.1 and 79.3 apply” for purposes of Section 79.2. 47 C.F.R. §§ 79.1(a)(1), 79.2(a)(1), 79.3(a)(4). Section 79.1(a)(1) defines “video programming” as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.” *Id.* § 79.1(a)(1). Section 79.3(a)(4) defines “video programming” as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.” *Id.* § 79.3(a)(4). Although Section 79.2 imposes requirements on covered *entities*, we find it useful to discuss the scope of the rules in terms of the *video programming* provided by covered entities, as it is such programming that must be made accessible. We discuss which entities are covered by our revised emergency information requirements in Section III.C herein. See *infra* Section III.C.

²⁰ This includes video programming offered over mobile DTV apparatus, which is provided by television broadcast stations, a category of “video programming distributors” subject to the emergency information requirements in Section 79.2(b) of our rules. 47 C.F.R. § 79.2(b). See also 47 C.F.R. § 79.1(a)(2) (defining “video programming distributor”). The National Association of Broadcasters (“NAB”) does not dispute that television broadcast stations must comply with the emergency information requirements in Section 79.2 when providing video programming via mobile DTV apparatus. See, e.g., Letter from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal (continued....)

that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.²¹ This interpretation is supported by Congress's reference to television-based definitions of video programming distributors and providers in Section 202 of the CVAA.²² Specifically, in Section 202 of the CVAA, Congress amended Section 713 of the Communications Act of 1934, as amended (the "Communications Act"), to require "video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired."²³ We believe that our interpretation is a reasonable reading of the statute because reference to definitions in the television closed captioning rule evidences Congress's intent to apply the emergency information requirements in Section 613(g) of the Communications Act to video programming provided by covered entities.²⁴

8. Although consumer groups urge the Commission to find that the rules extend more broadly to all Internet protocol ("IP")-delivered video programming,²⁵ other commenters argue that there is nothing in the statute or legislative history indicating that Congress intended to expand the scope of the emergency information rules in this manner.²⁶ In addition, NAB observes that legal, practical, and

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and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 1 (Feb. 8, 2013) ("NAB Feb. 8 *Ex Parte* Letter") (stating that our rules should afford flexibility to program originators "so that the viewer is able [to] access emergency information" on mobile DTV devices).

²¹ See 47 C.F.R. § 79.2; *NPRM*, 27 FCC Rcd at 14734, ¶ 6. As noted above, the Commission's rules state that for purposes of Section 79.2, "the definitions in §§79.1 and 79.3 apply." 47 C.F.R. §§ 79.1(a)(2), 79.2(a)(1), 79.3(a)(5). Section 79.1(a)(2) defines a "video programming distributor" as "[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)(2). See also *id.* § 79.3(a)(5) (providing a nearly identical definition of "video programming distributor"). In the *NPRM*, we proposed that the emergency information rules would continue to apply only to television broadcast services and MVPD services. See *NPRM*, 27 FCC Rcd at 14734, ¶ 6. After further consideration of this issue, however, we believe a better approach is to describe the scope of the emergency information rules more precisely by tracking the language used in our existing rules. Thus, the rules will continue to apply to video programming provided by covered entities, which includes programming provided by broadcasters, MVPDs, and "any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission." 47 C.F.R. § 79.1(a)(2).

²² 47 U.S.C. § 613(g)(2) (referencing the definitions of video programming providers and video programming distributors from the television closed captioning rule, 47 C.F.R. § 79.1). See Reply Comments of AT&T Services, Inc. at 2 ("AT&T Reply").

²³ 47 U.S.C. § 613(g)(2) (emphasis added). See 47 C.F.R. §§ 79.1(a)(2), (a)(3).

²⁴ Although Section 613(g)(2) also refers to "program owners," a term that is not defined separately in Section 79.1 of the Commission's rules, we note that the definition of "video programming provider" in Section 79.1(a)(3) includes "but [is] not limited to broadcast or nonbroadcast television network and the owners of such programming." 47 U.S.C. § 613(g)(2); 47 C.F.R. § 79.1(a)(3). See *infra* Section III.C. Thus, we believe our interpretation also is consistent with Congress's inclusion of "program owners" as responsible parties in Section 202 of the CVAA.

²⁵ See Comments of the American Council of the Blind at 2 ("ACB Comments"); Comments of the Rehabilitation Engineering Research Center on Telecommunications Access *et al.* at 8 ("Consumer Groups Comments"); Reply Comments of the Rehabilitation Engineering Research Center on Telecommunications Access *et al.* at 4 ("Consumer Groups Reply"). See also Comments of the Rehabilitation Engineering Research Center for Wireless Technologies at 13-14 ("Wireless RERC Comments") (recommending that the Commission investigate the technical feasibility of providing emergency information in both aural and visual formats on live, IP-delivered programming).

²⁶ See Comments of the Entertainment Software Association at 1, 3-5 ("ESA Comments"); Comments of the Telecommunications Industry Association at 6 ("TIA Comments"); AT&T Reply at 1-2; Reply Comments of the (continued....)

technological limitations currently preclude a uniform or consistent methodology for Internet-delivered emergency information, and that delivering emergency information via IP raises issues with regard to timeliness and geographic relevance of the information.²⁷ We agree that at the present time, the delivery of emergency information via IP raises issues – both in terms of scope and in terms of practicality – that currently make it difficult to achieve.²⁸ Accordingly, at this time, we find that the emergency information rules do not apply to IP-delivered video programming, such as the programming provided by online video distributors (“OVDs”)²⁹ like Netflix and Hulu.³⁰ We recognize, however, that the nature of the delivery of video programming is evolving, and in the coming years, the Commission may need to consider the regulatory implications associated with new forms of video programming services provided by covered entities.

9. We also adopt the *NPRM*'s conclusion that the emergency information rule in Section 79.2 applies more broadly than the regulations governing the Emergency Alert System (“EAS”), which are found in Part 11 of our rules.³¹ The EAS rules contain the technical standards and operational procedures of the EAS, which provides the President with the ability to communicate immediately to the

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National Association of Broadcasters at 2 (“NAB Reply”). See also Letter from Diane B. Burstein, Vice President and Deputy General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 28, 2013) (“NCTA Feb. 28 *Ex Parte* Letter”); Letter from Diane B. Burstein, Vice President and Deputy General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 11, 2013) (“NCTA Mar. 11 *Ex Parte* Letter”); Letter from James R. Coltharp, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 19, 2013) (“Comcast Feb. 19 *Ex Parte* Letter”); Letter from James R. Coltharp, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 4, 2013) (“Comcast Mar. 4 *Ex Parte* Letter”); Letter from James R. Coltharp, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 15, 2013) (“Comcast Mar. 15 *Ex Parte* Letter”). We note, however, that Congress charged the VPAAC with reporting and making recommendations to the Commission with respect to the delivery of accessible emergency information and video description using IP. See Pub. L. No. 111-260, §§ 201(e)(2)(B), (C), and (E).

²⁷ NAB Reply at 3 (citing VPAAC Second Report: Access to Emergency Information at 9).

²⁸ We also note that Section 79.2(b)(2) applies the rule “to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.” 47 C.F.R. § 79.2(b)(2). Given this geographic limitation, applying the rule broadly to cover all IP-delivered video programming, regardless of location, may not serve a useful purpose for and may cause confusion to viewers in areas with no connection to the location of the emergency.

²⁹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, 8612, n. 6 (2012) (“An ‘OVD’ is any entity that offers video content by means of the Internet or other Internet Protocol (IP)-based transmission path provided by a person or entity other than the OVD. An OVD does not include an MVPD inside its MVPD footprint or an MVPD to the extent it is offering online video content as a component of an MVPD subscription to customers whose homes are inside its MVPD footprint.”).

³⁰ There are situations, however, where our emergency information rules do apply to IP-delivered video programming provided by a covered entity. For example, as AT&T explains, although its U-Verse service is an Internet protocol television (“IPTV”) service, AT&T is an MVPD, and, thus, the video programming offered through this service would be subject to the emergency information rules. See AT&T Reply at 2, n. 6. We also note that in the *Further Notice* we inquire whether an MVPD service is covered by the emergency information rules adopted herein, when an MVPD, as defined in the Commission’s rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices. See *infra* Section V. At this time, however, we find that the emergency information rules do not apply to video programming available for viewing on an Internet website, even if such programming is provided by a covered entity. See, e.g., NAB Reply at 3-4.

³¹ See *NPRM*, 27 FCC Rcd at 14729-30, ¶ 2, n. 8. See also Comments of the National Cable & Telecommunications Association at 6-7 (“NCTA Comments”); VPAAC Second Report: Access to Emergency Information at 3-4.

general public during periods of national emergency, and which may be used to provide the heads of state and local governments, or their designated representatives, with a means of emergency communication with the public in their state or local areas.³² The EAS has its own guidelines and requirements for message content and transmission. In contrast, Section 79.2 applies to televised information about a current emergency affecting the local geographic area, intended to further the protection of life, health, safety, and property.³³ We agree with the National Cable & Telecommunications Association (“NCTA”) that the accessibility of televised emergency information required under Section 79.2 is a separate matter from an activation of the EAS as governed by Part 11 of our rules.³⁴ Accordingly, we clarify that the emergency information covered by this proceeding does not include emergency alerts delivered through the EAS, which are subject to separate accessibility requirements requiring the transmission of EAS attention signals and EAS messages in audio and visual formats.³⁵ However, to the extent a broadcaster or other covered entity uses the information provided through EAS or any other source (*e.g.*, information from the National Weather Service) to generate its own crawl conveying emergency information as defined in Section 79.2(a)(2) outside the context of an EAS activation, it must comply with the requirements of Section 79.2.

B. Accessible Emergency Information Requirements

10. Section 79.2 of the Commission’s rules requires video programming distributors to make emergency information accessible to individuals “with visual disabilities,” and it contains separate requirements for emergency information that is presented visually during newscasts and for emergency information that is provided visually during programming that is not a newscast.³⁶ With regard to emergency information provided visually during newscasts, we make no changes to the requirement that covered entities make emergency information accessible to persons with visual disabilities by aurally describing such information in the main program audio.³⁷ No commenter indicates a need to revise the existing requirement applicable to emergency information provided visually in a newscast. We agree with NAB and NCTA that there is no need to change this portion of the rule because emergency information conveyed during newscasts is currently required to be accessible to individuals who are blind

³² See 47 C.F.R. § 11.1.

³³ See *id.* §§ 79.2(a)(2), (b)(2).

³⁴ NCTA Comments at 6. See also Letter from Diane B. Burstein, Vice President and Deputy General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, at 1 (Jan. 18, 2013) (“NCTA Jan. 18 *Ex Parte* Letter”); NCTA Feb. 28 *Ex Parte* Letter at 1; NCTA Mar. 11 *Ex Parte* Letter at 1. But see Wireless RERC Comments at 8 (arguing that if the Commission imposes new televised emergency information requirements on MVPDs, the requirements should extend to EAS messages because it will simplify compliance and standardize the appearance and accessibility of televised emergency information). The Wireless RERC also argues that participation in EAS should be mandatory, not voluntary. Wireless RERC Comments at 8. This issue is outside the scope of the current proceeding and, thus, we do not address it here.

³⁵ See, *e.g.*, 47 C.F.R. § 11.51; NCTA Comments at 6 (citing 47 C.F.R. §§ 11.51(g), (h)). See also Comments of AT&T Services, Inc. at 3, n. 4 (“AT&T Comments”) (noting that AT&T delivers EAS alerts in aural form). Section 11.51(b) of the Commission’s rules provides that “[p]auses in video programming before EAS message transmission should not cause television receivers to mute EAS audio messages.” 47 C.F.R. § 11.51(b).

³⁶ See 47 C.F.R. §§ 79.2(b)(1)(ii)-(iii). We discuss below changes to the latter portion of the rule addressing emergency information provided visually during non-newscast programming. See *infra* Section III.B.1.

³⁷ 47 C.F.R. § 79.2(b)(1)(ii). See also *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, 15250-51, ¶¶ 49-50 (2000) (“2000 Video Description Order”) (“We envision that affected broadcast stations and MVPDs will aurally describe the emergency information in the main audio as part of their ordinary operations.”).

or visually impaired through the aural presentation in the main program audio stream.³⁸ Thus, the current rule with respect to newscasts satisfies the CVAA’s mandate that our regulations require covered entities to “convey . . . emergency information in a manner accessible to individuals who are blind or visually impaired.”³⁹ While we are not changing the basic requirement that covered entities make emergency information provided in the video portion of a regularly scheduled newscast or newscast that interrupts regular programming accessible to persons with visual disabilities, we are expanding the rule to cover video programming providers (which includes program owners) as responsible parties, in addition to already covered video programming distributors, as required by the statute.⁴⁰

1. Requirements Applicable to Emergency Information Provided Visually During Non-Newscast Programming

11. We revise the portion of our rule that addresses emergency information provided visually during non-newscast programming to require that covered entities make emergency information accessible to individuals who are blind or visually impaired by aurally describing the emergency information on a secondary audio stream.⁴¹ We note that the VPAAC recommended the use of a secondary audio stream to provide accessible emergency information.⁴² As explained herein, we agree that use of a secondary audio stream is the best means to implement the CVAA’s directive to make emergency information accessible because many covered entities already provide or have the capability to pass through secondary audio streams, and because individuals who are blind or visually impaired have

³⁸ See Comments of the National Association of Broadcasters at 6 (“NAB Comments”) (explaining that no substantive change to this portion of the rule is needed because emergency information conveyed during newscasts is already accessible to individuals who are blind or visually impaired through the aural presentation in the main program audio stream); NCTA Comments at 3 (agreeing that there is no need to revise the requirements governing accessibility of emergency information provided during newscasts and that the focus of this proceeding should be on emergency information provided during non-newscast programming). See also NCTA Feb. 28 *Ex Parte* Letter at 1; NCTA Mar. 11 *Ex Parte* Letter at 1.

³⁹ 47 U.S.C. § 613(g)(2). In contrast, we revise the current rule applicable to non-newscast programming – which requires that emergency information be accompanied with an aural tone – as discussed herein to ensure that such information is conveyed in a manner accessible to individuals who are blind or visually impaired. See *infra* Section III.B.1.

⁴⁰ See *infra* Section III.C; 47 U.S.C. § 613(g)(2). We also make a non-substantive change to Sections 79.2(b)(2)(i) and 79.2(b)(2)(ii) of the revised rule by replacing the term “persons with visual disabilities,” as reflected in our current rules, with “individuals who are blind or visually impaired,” as reflected in the language used in the CVAA. See *infra* Appendix B (Final Rules), §§ 79.2(b)(2)(i)-(ii). See also 47 U.S.C. § 613(g). There is no indication in the CVAA that Congress considered there to be a substantive difference between the two phrases, nor do we intend one. We simply make this change to conform the language in our rules to be consistent with the language used in the CVAA. See 47 U.S.C. § 613(g).

⁴¹ We also adopt non-substantive edits to our existing emergency information rules to make the meaning more clear. As proposed in the *NPRM*, we change references in Sections 79.2(b)(2)(i) and 79.2(b)(2)(ii) of the revised rule to “[e]mergency information that is provided in the video portion” to “[e]mergency information that is provided visually.” *NPRM*, 27 FCC Rcd at 14735, n. 52. See *infra* Appendix B (Final Rules), §§ 79.2(b)(2)(i)-(ii). No commenter takes issue with this proposed change. Further, in Section 79.2(b)(2)(ii) of the revised rule, we change the phrase “programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming” to read “programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming.” See *infra* Appendix B (Final Rules), § 79.2(b)(2)(ii). NAB supports a similar change to the language in this section to clarify that the requirement applies to programming that is *neither* a regularly scheduled programming, *nor* a newscast that interrupts regular programming. See NAB Comments at 6.

⁴² See VPAAC Second Report: Access to Emergency Information at 7, 10-11.

familiarity with accessing this stream for video description services.⁴³ We therefore adopt the VPAAC's recommendation. Under our current rules, if emergency information is provided in the video portion of programming that is not a regularly scheduled newscast or a newscast that interrupts regular programming, it must be accompanied with an aural tone.⁴⁴ Although the rules do not specify the parameters of the "aural tone," under standard industry practice, three high-pitched tones are used to indicate the presence of on-screen emergency information.⁴⁵ While the aural tone alerts members of the program's audience who are blind or visually impaired that an emergency situation exists, these individuals must resort to an alternative source, such as the radio, to try to obtain more specific details about the nature and severity of the emergency.⁴⁶ As a result, individuals who are blind or visually impaired may have inadequate or untimely access to the critical details of an emergency in the local viewing area.⁴⁷

12. In accordance with the CVAA's mandate in Section 202, we modify the current rule applicable to emergency information provided visually in programming that is not a newscast to ensure that such information is conveyed in a manner accessible to consumers who are blind or visually impaired. Specifically, if emergency information is provided visually in programming that is neither a regularly scheduled newscast nor a newscast that interrupts regular programming, we require that covered entities also make an aural presentation of this information available on a secondary audio stream.⁴⁸ We continue to require use of the aural tone as an alerting mechanism on the main program audio, and we also now require use of the aural tone to precede emergency information on the secondary audio stream.⁴⁹ On the main program audio, the purpose of the aural tone is to alert persons who are blind or visually impaired that visual emergency information is available. On a secondary audio stream, the aural tone has the additional purpose of differentiating audio accompanying the underlying programming from emergency information audio. Under this approach, consumers who are blind or visually impaired would be alerted to the presence of an emergency situation through the aural tone, and would then be able to promptly access the televised emergency information on the secondary audio stream.⁵⁰ With our new rule, consumers who are blind or visually impaired no longer need to use a source other than the television to obtain the critical details of an emergency.⁵¹

13. There is a general consensus in the record among both industry and consumer groups that use of the secondary audio stream is the best method to ensure accessibility of visual emergency

⁴³ See *infra* ¶ 13.

⁴⁴ 47 C.F.R. § 79.2(b)(1)(iii).

⁴⁵ VPAAC Second Report: Access to Emergency Information at 3.

⁴⁶ See *id.* at 3-4. See also *2000 Video Description Order*, 15 FCC Rcd at 15250, ¶ 48; AT&T Comments at 2 (observing that the current rule merely informs individuals who are blind or visually impaired that there is an emergency, but they need to take steps to seek other accessible media).

⁴⁷ See VPAAC Second Report: Access to Emergency Information at 7.

⁴⁸ See *id.* at 10.

⁴⁹ See AT&T Comments at 6-7 (recommending that we continue to require the use of an aural tone to notify individuals who are blind or visually impaired that they need to either access the secondary stream for emergency information or seek this information from other sources).

⁵⁰ *NPRM*, 27 FCC Rcd at 14735-36, ¶ 9. See VPAAC Second Report: Access to Emergency Information at 10.

⁵¹ See Wireless RERC Comments at 12 (arguing that we should "avoid requiring people with vision loss to access an alternate technology to get the same information the sighted get from the television," as the need to "[s]eek[] complete information through a secondary source will inevitably slow down reaction time" in emergency situations).

information presented during non-newscast programming.⁵² We agree with AT&T and other commenters that requiring use of a secondary audio stream to carry aural emergency information is “a straightforward and ideal solution” because many covered entities already provide a secondary audio stream for video description or foreign language translation,⁵³ and there are few technical impediments to passing through aural emergency information on a secondary audio stream.⁵⁴ Moreover, consumers who are blind or visually impaired have familiarity with using the secondary audio stream to access video description.⁵⁵

14. At this time, we do not require covered entities to provide an audio stream that is dedicated solely to aurally accessible emergency information. MVPD commenters argue that mandating

⁵² See AT&T Comments at 2, 5 (arguing that use of the secondary audio stream “is a straightforward and ideal solution” to make emergency information accessible); Comments of DIRECTV, LLC at 5 (“DIRECTV Comments”) (“support[ing] the Commission’s approach of employing secondary audio streams that already exist” to provide accessible emergency information); Comments of DISH Network L.L.C. at 3 (“DISH Network Comments”) (arguing that secondary audio streams “could offer a workable method of providing accessible emergency information”); NAB Comments at 5 (supporting use of a secondary audio stream because this approach “is sensible from a technical and practical perspective” and “ensures that viewers benefit by receiving critical crawled information”); NCTA Comments at 4-5 (stating that use of the same audio stream that is used for video description “makes sense for enhancing accessibility at this time”); Wireless RERC Comments at 7 (recommending that emergency information be provided on the secondary audio stream containing video description); Reply Comments of CenturyLink, Inc. at 1-2 (“CenturyLink Reply”) (supporting use of the secondary audio stream to convey emergency information that is displayed visually during non-newscast programming); Reply Comments of Verizon at 2 (“Verizon Reply”) (supporting use of the secondary audio stream and observing that no commenter objected to this proposal); Comcast Feb. 19 *Ex Parte* Letter at 2 (expressing support for proposal to pass through emergency information in the secondary audio stream); Comcast Mar. 4 *Ex Parte* Letter at 1 (same); Comcast Mar. 15 *Ex Parte* Letter at 1 (same). *But see* Comments of The Weather Channel, LLC at 4-5 (“The Weather Channel Comments”) (while use of a secondary audio stream “may be the quickest and most effective way for many covered entities” to make visual emergency information accessible, the Commission should not impose this requirement on The Weather Channel unless it “is the only reasonable way to achieve compliance with Congress’s goals in the CVAA”). The Weather Channel’s unique concerns are addressed separately in paragraphs 38 through 40 herein.

⁵³ AT&T Comments at 2. Our rules currently require full-power affiliates of the top four national networks located in the top 25 television markets to provide 50 hours per calendar quarter of video-described prime time and/or children’s programming. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11849, ¶ 4 (2011) (“*2011 Video Description Order*”). See *NPRM*, 27 FCC Rcd at 14733, ¶ 5. Full-power affiliates of the top four national networks located in markets 26-60 also will be subject to this requirement beginning July 1, 2015. *2011 Video Description Order*, 26 FCC Rcd at 11856, ¶ 16. Given that video description is provided as a secondary audio service, top four broadcast affiliates in the top 60 markets either already have or soon will be required to have a secondary audio stream.

⁵⁴ See AT&T Comments at 5 (stating that there is no technical impediment to carrying aural emergency information on the secondary audio stream, which “has a proven capability of carrying various types of information”); DIRECTV Comments at 2, 5 (explaining that where DIRECTV already carries a station’s secondary audio stream, it would be “a relatively simple process to transmit any audio emergency information provided to DIRECTV by that station in its secondary audio stream”); NCTA Comments at 4 (noting that cable operators already pass through video description in secondary audio streams, and that a secondary audio stream pass-through requirement for emergency information “would present few technical challenges” for cable operators); NCTA Jan. 18 *Ex Parte* Letter at 1; NCTA Feb. 28 *Ex Parte* Letter at 1; NCTA Mar. 11 *Ex Parte* Letter at 1; Comcast Feb. 19 *Ex Parte* Letter at 2 (noting that “Comcast today passes through the secondary audio stream for all its cable services”); Comcast Mar. 4 *Ex Parte* Letter at 1 (same); Comcast Mar. 15 *Ex Parte* Letter at 1 (same). *But see* Letter from Barbara S. Esbin, Counsel for American Cable Association, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 7, 2013) (“*ACA Mar. 7 Ex Parte Letter*”) (explaining that “some cable operators maintaining hybrid digital/analog or all-analog systems who also, or only, deliver broadcast signals in analog may not have equipment that permits the pass-through of [secondary audio streams]”) (footnote omitted).

⁵⁵ See AT&T Comments at 2; Wireless RERC Comments at 7.

more than two audio streams – one for main audio, one for video description, and one for emergency information – would be costly and, in some cases, would pose technical difficulties.⁵⁶ We therefore agree with commenters that requiring that stations and operators use a secondary audio stream to provide aural emergency information will allow them to achieve accessibility in a more efficient and cost-effective way.⁵⁷ Notably, no commenter suggests that we should mandate more than two audio streams. Although additional audio streams are not required, if a covered entity does provide more than two audio streams, we encourage them as a best practice to make aurally accessible emergency information available on the same audio stream that is used to provide video description, because consumers who are blind or visually impaired should have more familiarity with accessing this stream.⁵⁸

15. While we mandate use of the secondary audio stream to aurally transmit emergency information to consumers, we do not adopt a specific method for providing an aural rendition of textual emergency information on a secondary audio stream. In the *NPRM*, we asked about the extent to which the Commission should allow the use of text-to-speech (“TTS”) technologies, which automatically generate an audio version of a textual message, and whether such technologies are sufficiently accurate and reliable for rendering an aural translation of emergency information text.⁵⁹ The record reflects a consensus that the rules should permit the use of TTS because it can be a useful and quick method to perform the text-to-aural translation of emergency information.⁶⁰ NAB argues that use of TTS should not

⁵⁶ See AT&T Comments at 5-6 (explaining that passing through more than two audio channels might not be possible if a system is bandwidth constrained and that, for AT&T, such a requirement “would likely result in a visible degradation in video coding quality”); DIRECTV Comments at 4 (noting that neither broadcasters nor MVPDs have unlimited capacity for additional audio channels); DISH Network Comments at 5 (“DBS providers have designed their systems to include only a single secondary audio service. In order for aurally accessible emergency information to be available on a secondary stream, it will need to share the same [secondary audio stream] that is also used for video description (if offered).”) (footnotes omitted); CenturyLink Reply at 1-2 (arguing that existing MVPD infrastructure generally supports no more than one secondary audio stream and, thus, “it would be costly and inefficient to require MVPDs to build a new audio stream to convey emergency information”). In the *NPRM*, the Commission sought comment on the impact, if any, of the proposals contained in the *NPRM* on broadcasters’ ability to channel share, which is an option for broadcast television stations that choose to participate in the Commission’s incentive spectrum auction. See *NPRM*, 27 FCC Rcd at 14736, ¶ 10; *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Report and Order, 27 FCC Rcd 4616, 4617, ¶ 2 (2012) (“establish[ing] the basic ground rules for sharing of broadcast channels by stations that choose to share a 6 MHz channel with one or more other stations in connection with the incentive auction”); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12385, ¶ 84 (2012) (stating that the reverse auction of broadcast television spectrum includes three bid options for participants, one of which is “voluntary relinquishment of ‘usage rights in order to share a television channel with another licensee’”) (footnote omitted). Commenters did not address this issue, and we do not expect the requirements adopted herein to have any impact on channel sharing.

⁵⁷ See AT&T Comments at 5 (arguing that use of the secondary audio stream “recognizes the competing bandwidth demands on MVPDs systems and that requiring a dedicated audio channel for emergency information only would be an inefficient use of limited resources”).

⁵⁸ See Wireless RERC Comments at 7 (“The Wireless RERC recommends that emergency information should always be provided on the audio stream containing video description . . . because people with vision loss who use [video description] for regular programming would be familiar with accessing this stream.”).

⁵⁹ *NPRM*, 27 FCC Rcd at 14737-38, ¶ 12. See also VPAAC Second Report: Access to Emergency Information at 9 (finding that TTS “is a valuable technology for creating aural representation of a text crawl in a timely fashion”).

⁶⁰ See ACB Comments at 3 (arguing that TTS is “imminently ideal” given “[t]he rapid development of TTS systems along with sophisticated ways of deploying these systems,” “provides the additional advantage of being available in multiple languages,” and will “increase the likelihood” that industry is able to meet implementation deadlines); NAB Comments at 14 (arguing that the rules should permit but not require the use of TTS); Comments of Kelly Pierce at 1-2 (“Pierce Comments”) (noting that TTS “can be a useful means of delivering information”); Wireless (continued....)

be mandated, however, because while TTS may be useful, it may not be the best method to effectively convey emergency information in all circumstances.⁶¹ In particular, NAB requests flexibility with regard to use of TTS or other specific technologies for aural translation because broadcasters may face potential technical and operational challenges in implementing TTS, and “there is no one size fits all solution.”⁶²

16. Based on the record, we permit, but do not require, the use of TTS technologies as a method for providing an aural rendition of emergency information, consistent with the Commission’s approach in the EAS context.⁶³ While we do not require the use of TTS, we believe it is necessary to revise our rule to provide qualitative standards for TTS for covered entities that choose to use TTS.⁶⁴ Specifically, information provided through TTS must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information.⁶⁵ Given the critical and urgent nature of emergency information, we expect covered entities to ensure that the aural version of textual emergency information provided through TTS is as effectively communicated to consumers who are blind or visually impaired as the textual content is conveyed to people who are able to see, and we will entertain consumer complaints about the quality of TTS.

17. *Technical Capability Exception.* We decline to adopt a technical capability exception to our new rule. Thus, unlike our approach in the *2011 Video Description Order*, we require all covered entities that provide visual emergency information that is covered by the rules to get the equipment

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RERC Comments at 8 (arguing that “[c]overed entities should be allowed to use TTS technology to provide audio description of emergency information” because “[i]n many cases, this is the fastest way to provide the information to the public”).

⁶¹ See NAB Comments at 14.

⁶² NAB Reply at 9-10. See also Letter from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Jan. 15, 2013) (“NAB Jan. 15 *Ex Parte* Letter”); Letters from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 7, 2013) (“NAB Mar. 7 *Ex Parte* Letters”); Letter from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 8, 2013) (“NAB Mar. 8 *Ex Parte* Letter”); The Weather Channel Comments at 6, n. 13 (stating that “designing a text-to-speech solution that would enable full aural renderings of each text crawl” would “create[] technical challenges” for The Weather Channel).

⁶³ As we explained more fully in the *NPRM*, the Commission determined on reconsideration in a recent proceeding that it would permit, but not require, regulated entities to use TTS to render EAS audio from the text of EAS alerts formatted in the Common Alerting Protocol (“CAP”). See *NPRM*, 27 FCC Rcd at 14737, ¶ 12, nn. 66-67 (citing *Review of the Emergency Alert System*, Order on Reconsideration, 27 FCC Rcd 4429, 4432, ¶¶ 7-8 (2012)). See also VPAAC Second Report: Access to Emergency Information at 9 (finding that “the need to generate the audio representation of a crawl in a timely manner outweighs any inconsistencies that might arise from the variations in TTS implementations”).

⁶⁴ See Pierce Comments at 2 (“The Commission cannot simply offer TTS technology as an option for delivering emergency audio information without also establishing guidelines of the basic parameters of the presentation of the information.”); Wireless RERC Comments at 9 (arguing that we “should require that the TTS technology be of a certain caliber to ensure that the audio information is clear and understandable” and should direct the VPAAC to identify standards for the provision of TTS). We note that the VPAAC’s directives with regard to reporting on video description and emergency information were set forth by Congress. See Pub. L. No. 111-260, §§ 201(e)(2)(A)-(E).

⁶⁵ See, e.g., Pierce Comments at 2. A covered entity’s *de minimis* failure to comply with the quality standards will not be treated as a violation of the regulations.

necessary to make a secondary audio stream available by the two-year compliance deadline adopted below.⁶⁶ The *2011 Video Description Order* reinstated a technical capability exception for certain stations and MVPDs that lack the technical capability to pass through video description.⁶⁷ We inquired in the *NPRM* whether there are any technical capability concerns that should be taken into account in the context of providing emergency information on a secondary audio stream and, if so, how such technical capability considerations should be addressed in the rules.⁶⁸ Some commenters support the inclusion of a technical capability exception.⁶⁹ In particular, NAB requests that the Commission “incorporate a technical capability exception in its rules . . . so that the emergency information requirements do not apply when a station lacks the technical capability necessary to create and transmit the emergency crawl in aural form – that is, on a secondary audio stream.”⁷⁰ According to NAB, a broadcast station should be considered to have the technical capability to support aural transcription of emergency information if it has the necessary equipment and infrastructure, except for items that would be of minimal cost, similar to the standard set forth in the video description context.⁷¹ The American Council of the Blind (“ACB”), on the other hand, argues that there should be more stringent standards for the technical capability exception for emergency information, and that this exception should apply only as an “absolute last resort.”⁷² We agree with ACB that the importance of providing accessible emergency information to consumers who are blind or visually impaired justifies a more rigorous standard from that adopted in the video description context.⁷³

18. At the same time, however, we note that DISH Network L.L.C. (“DISH Network”) and

⁶⁶ See *infra* Section III.D. See also Wireless RERC Comments at 6 (“[T]he Wireless RERC recommends that if the video programming distributor has the technical capability to provide a secondary audio stream for the provision of emergency information then they should be required to utilize their secondary audio stream.”). We note all covered entities may petition for a waiver of these requirements for good cause pursuant to Section 1.3 of our rules. See 47 C.F.R. § 1.3. In particular, we note that broadcast stations in smaller markets that do not have the necessary equipment to provide a secondary audio stream can file a request for waiver of the requirements adopted herein. Given the importance of accessible emergency information, we do not anticipate that waivers will be routinely granted.

⁶⁷ *2011 Video Description Order*, 26 FCC Rcd at 11860-62, ¶¶ 23-27. See *NPRM*, 27 FCC Rcd at 14736, ¶ 10. Under the *2011 Video Description Order*, a station or system lacks the technical capability to pass through video description if it does not have “virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.” *2011 Video Description Order*, 26 FCC Rcd at 11861, ¶ 27 (footnote omitted).

⁶⁸ *NPRM*, 27 FCC Rcd at 14736, ¶ 10.

⁶⁹ See ACB Comments at 2 (“hesitatingly agree[ing]” that there should be a technical capability exception for television stations that do not have the capability to provide emergency information on a secondary channel); NAB Comments at 12 (arguing that the Commission should “incorporate a technical capability exception in its rules like that adopted in the *2011 Video Description Order*”) (footnotes omitted); CenturyLink Reply at 3 (arguing that the technical capability exception in the video description rules should apply to emergency information requirements because some existing infrastructure may not support the use of secondary audio streams).

⁷⁰ NAB Comments at 12 (footnotes omitted).

⁷¹ See *id.* at 12, n. 27 (citing *2011 Video Description Order*, 26 FCC Rcd at 11860, ¶ 23).

⁷² See ACB Comments at 2 (noting further that the exception should “be accompanied by a rigorous set of requirements for achieving technical capability unless the station or network is financially unable to do so”).

⁷³ This action is consistent with our existing rules requiring visual access to emergency information, without exception, to people who are deaf or hard of hearing. See 47 C.F.R. § 79.2. Unlike our closed captioning rules, which permit certain exemptions, there are no exemptions applicable to our rules governing the provision of accessible emergency information to this same population because of the heightened public interest in ensuring that all viewers can access televised emergency information. See *id.* §§ 79.1, 79.2.

DIRECTV raise concerns about spot beam capacity, which is a problem unique to direct broadcast satellite (“DBS”) providers. Spot beams allow satellite transmissions to be focused on a specific area within the footprint of the satellite, enabling DBS providers to deliver local channels to precisely defined areas. DIRECTV explains that, while it currently carries the secondary audio stream of affiliates of the four major networks and PBS in the markets where it provides local service, it would not have sufficient capacity on its spot beams if a significant number of additional local stations were to request carriage of their secondary audio channels.⁷⁴ Similarly, DISH Network states that it “may not have sufficient capacity in its spot beams if large numbers of local broadcast stations launch new [secondary audio] services.”⁷⁵ The DBS providers indicate that if the Commission imposes a pass-through requirement for all local stations that provide emergency information on a secondary audio stream, capacity constraints would affect their ability to add new local-into-local markets and to comply with their “carry-one, carry-all” obligations.⁷⁶ They argue that there is no simple remedy for this problem, as DBS providers would have to replace existing satellites or launch additional satellites to expand capacity or would have to curtail other valuable services, such as carriage of local broadcast stations or carriage of stations in HD.⁷⁷ As such, DIRECTV and DISH Network request that the Commission take into account spot beam capacity constraints in considering an exception for DBS providers from the revised emergency information rule.⁷⁸

19. We require DBS providers to pass through the secondary audio streams of all stations that provide aural emergency information pursuant to our revised rule.⁷⁹ Nonetheless, given the technical constraints faced by DBS providers, we recognize DIRECTV and DISH Network may require relief from the requirement to pass through secondary audio streams in specialized circumstances, *e.g.*, for any stations carried in a market where they do not have sufficient spot beam capacity, but we believe our

⁷⁴ See DIRECTV Comments at 2, 5-7; Letter from William M. Wiltshire, Counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC, at 1-2 and Attachment at 1 (Jan. 18, 2013) (“DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter”).

⁷⁵ See DISH Network Comments at 3.

⁷⁶ See DIRECTV Comments at 6-7; DISH Network Comments at 4.

⁷⁷ See, *e.g.*, *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5351, 5355-56, 5358-59, ¶¶ 7-8, 10-11 (2008) (“*Carriage of DTV Signals Order*”); DIRECTV Comments at 7-8, n. 26; DISH Network Comments at 4.

⁷⁸ Specifically, DIRECTV asks that we adopt a streamlined procedure for granting a waiver of the requirement to pass through a station’s secondary audio stream in a particular market, if the DBS provider certifies that the spot beam serving the relevant market does not have sufficient capacity. See Letter from William M. Wiltshire, Counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Feb. 7, 2013) (“DIRECTV Feb. 7 *Ex Parte* Letter”). See also DIRECTV Comments at 7-8. DISH Network argues that “[t]he Commission should establish that, for the purposes of any new rules for accessibility of emergency information, the available capacity on the relevant spot beam should be included, among other things, in the determination of whether a DBS provider has the ‘technical capability’ to carry the [secondary audio channel] of any particular local broadcast station.” DISH Network Comments at 4. See also DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter, at 2 and Attachment at 2.

⁷⁹ DISH Network represents that “DBS providers generally have the technical capability to offer secondary audio streams for local broadcast stations that they retransmit,” and DIRECTV represents that it currently passes through the secondary audio streams for the top four network affiliates and PBS in each market and that it “passes through the secondary audio channel of every station that offers it to DIRECTV today.” See DIRECTV Comments at 5-6; DISH Network Comments at 3. See also DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter, Attachment at 1.

existing waiver process is an appropriate mechanism to address such concerns.⁸⁰ As we discussed in the *NPRM* in the context of Section 203 obligations, the House Committee Report accompanying the CVAA recognized that DBS providers may face unique technical challenges, including capacity constraints on spot beams used to deliver local signals, which should be considered when promulgating rules.⁸¹ We believe that the general waiver approach, rather than the “streamlined” waiver procedure suggested by DIRECTV,⁸² appropriately balances DBS capacity limitations with the statutory directive to make televised emergency information accessible to consumers who are blind or visually impaired. We also note that DBS providers are already required to carry stations’ “[s]econdary audio programming” pursuant to the requirements governing satellite carriage of broadcast stations in Section 76.66(j) of the Commission’s rules.⁸³ Thus, if either DBS provider seeks a waiver from the requirement to pass through a station’s secondary audio channel adopted in this proceeding, it will also have to justify a waiver of this portion of Section 76.66(j). This makes our adopting the streamlined waiver procedure proposed by DIRECTV in this proceeding inappropriate because the issue regarding compliance with Section 76.66(j) of our rules has not properly been raised in this, or any, pending proceeding.

20. We recognize that small cable systems, particularly those that are analog-only, may face unique difficulties in complying with the rules adopted herein. Although it did not file comments or reply comments in this proceeding, the American Cable Association (“ACA”) recently submitted an *ex parte* filing in which it requested that the Commission: (1) “[p]ermit hybrid digital/analog systems that do not have the equipment to pass through the broadcast [secondary audio stream] on their analog service the option of making emergency information accessible to blind or visually impaired customers through that system’s digital service by providing eligible customers with set-top boxes at no charge for up to three analog television sets in their home;” (2) “[p]rovide an exception for all-analog systems that serve 1,000 or fewer subscribers and lack the equipment to pass through broadcast [secondary audio stream];” and (3) “[d]efer for three years application of the emergency information pass-through requirement for all-analog systems with more than 1,000 subscribers.”⁸⁴ ACA filed a subsequent *ex parte* letter in which it further

⁸⁰ 47 C.F.R. § 1.3. A certification from the Chief Technical Officer that the spot beam serving the relevant market does not have sufficient capacity to support carriage of the secondary audio would be probative in a request for waiver. See DIRECTV Feb. 7 *Ex Parte* Letter at 1.

⁸¹ See *NPRM*, 27 FCC Rcd at 14741, ¶ 20 and n. 90 (citing House Committee Report at 31) (“[T]he Committee understands that [DBS] providers may have different technical limitations, such as capacity constraints on spot beams used to deliver local signals, than other [MVPDs]. The Committee intends that the Commission consider these limitations when promulgating regulations and, if necessary, provide some flexibility where technical constraints exist.”). See also DIRECTV Comments at 7; DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter, Attachment at 1. According to DISH Network, the fact that DBS providers have very limited capacity on the spot beams used to retransmit local broadcast stations has been well-established in Commission proceedings. DISH Network Comments at 3-4 (citing *Carriage of DTV Signals Order*, 23 FCC Rcd at 5356, 5359).

⁸² Specifically, DIRECTV “urge[s] the Commission to adopt a streamlined procedure for granting a waiver of any secondary audio carriage requirement in a particular market (including Section 76.66). For example, when a DBS operator concludes that it cannot honor a request to add a new secondary audio stream from a broadcast station, a waiver would be granted if its Chief Technical Officer (or equivalent) certifies that the spot beam serving the relevant market does not have sufficient capacity to support carriage of the secondary audio without compromising the other broadcast signals carried on that beam. The waiver issued in response to such certification would remain in place for one year, subject to extension annually if the DBS operator re-certifies that it continues to have insufficient capacity to support additional secondary audio feeds in that market.” DIRECTV Feb. 7 *Ex Parte* Letter at 1-2.

⁸³ See 47 C.F.R. § 76.66(j) (“Each television station carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval. . . . Secondary audio programming must also be carried.”).

⁸⁴ ACA Mar. 7 *Ex Parte* Letter at 3.

refined its proposals by requesting that the Commission: (1) grant all all-analog systems, regardless of size, that lack the equipment to pass through secondary audio streams, an additional three years following the effective date of the revised emergency information requirements to come into compliance; and (2) address concerns raised with regard to hybrid digital/analog systems that lack the equipment necessary to pass through secondary audio streams on their analog service “by inviting the filing of class waivers on behalf of these systems.”⁸⁵ Although we are sympathetic to the issues raised by ACA, we do not believe that we have an adequate record upon which to address its proposals in the context of the instant proceeding. In this regard, we note that there are several issues surrounding ACA’s proposals that have not been sufficiently developed. For example, should there be an upper subscriber limit on the hybrid digital/analog systems that are permitted to comply through an alternate means, what notification requirements should we impose on operators of analog systems to ensure their subscribers are aware of the operator’s inability to provide the secondary audio stream, and to the extent that cable operators provide eligible customers with free set-top boxes, how could subscribers certify that they need such an accommodation? Accordingly, we decline to address ACA’s requests at this time, finding that they would be better handled through the existing waiver process in which ACA has an opportunity to further develop its proposals and other interested parties have a sufficient opportunity to comment.⁸⁶ Should ACA choose to file a subsequent request for waiver or extension of time,⁸⁷ we delegate authority to the Media Bureau to address such a request.⁸⁸ Given that the requirements we adopt herein do not take effect for two years, ACA will have sufficient time to seek a waiver in advance of the new requirements taking effect.

21. *Alternatives to Use of Secondary Audio Stream.* We do not adopt any of the alternative methods for making emergency information accessible to consumers who are blind or visually impaired that were considered but not recommended by the VPAAC, as described in the *NPRM*.⁸⁹ There is little

⁸⁵ Letter from Barbara S. Esbin, Counsel for American Cable Association, to Marlene H. Dortch, Secretary, FCC, at 2-3 (Apr. 2, 2013).

⁸⁶ See Letters from Barbara S. Esbin, Counsel for American Cable Association, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 22, 2013) (“If the Commission opts to consider relief for operators of smaller cable systems through a waiver process, ACA suggested that the Commission explicitly welcome the filing of such petitions on behalf of similarly situated classes of systems to achieve relief comparable to that currently sought.”).

⁸⁷ See 47 C.F.R. § 1.3 (Suspension, amendment, or waiver of rules).

⁸⁸ See also *id.* §§ 0.61 (providing the Media Bureau with authority to “[p]rocess and act on all . . . waiver requests . . . regarding the areas listed”); 0.283 (“The Chief, Media Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.61. . .”).

⁸⁹ See *NPRM*, 27 FCC Rcd at 14740, ¶ 18. For example, the VPAAC considered but did not recommend alternatives such as: (1) including a shortened audio version of the textual emergency information on the main program audio; or (2) broadcasting a five to ten second audio message on the main program audio after the three aural tones to inform individuals who are blind or visually impaired of a means by which they can access the emergency information, such as a telephone number or radio station. VPAAC Second Report: Access to Emergency Information at 8. According to the VPAAC, these alternatives have disadvantages, including interruption to the main program audio that could be disruptive to viewers and the need for sufficient resources to create and manage the brief audio messages. *Id.* The VPAAC also considered but did not recommend other alternatives such as “dipping” or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location. See *id.* at 11-12. The VPAAC determined that these alternatives either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems. *Id.*

support in the record for these proposals.⁹⁰ Although NAB, NCTA, and The Weather Channel propose that we grant covered entities flexibility in the methods used to convey emergency information in a manner accessible to individuals who are blind or visually impaired,⁹¹ we believe that mandating the use of the secondary audio stream to provide an aural representation of visual emergency information is a better approach to provide consistency for the viewing audience, particularly given the overwhelming support in the record for this method.⁹²

22. At this time, the record does not support taking additional steps to address the particular needs of people with both vision and hearing loss. National Public Radio, Inc. (“NPR”) asks the Commission to consider alternative methods of presenting visual emergency information to persons with hearing and visual disabilities, such as use of USB connections on digital televisions to port text of CAP messages to refreshable Braille devices.⁹³ The Rehabilitation Engineering Research Center on Telecommunications Access *et al.* (“Consumer Groups”) explain that televised emergency information would remain inaccessible to individuals who are blind or visually impaired and deaf or hard of hearing if we mandate use of the secondary audio stream alone to convey emergency information provided in on-screen crawls, and that such a result is contrary to the intent of the CVAA.⁹⁴ According to Consumer

⁹⁰ See Pierce Comments at 5 (arguing that the other alternatives identified in the *NPRM* do not merit further consideration, as they present problems for non-disabled viewers, are not easily delivered, and detract from the meaningful solution proposed by the FCC); The Weather Channel Comments at 7 (stating that it “is not currently aware of . . . an alternative means to deliver more detailed aural alerts”); Verizon Reply at 5 (stating that the Commission should not reconsider alternative methods to convey emergency information that were rejected by the VPAAC). See also Wireless RERC Comments at 12 (arguing that the Commission should not permit any alternatives that require individuals who are blind or visually impaired to seek complete information from a secondary source other than the television). Verizon supports the use of TTS in apparatus as an alternative to use of the secondary audio stream, but observes that technical challenges must be resolved before TTS can be included in set-top boxes. Verizon Reply at 3. For the reasons set forth in Section IV.A.1 herein, we do not require covered apparatus to contain TTS capability. See *infra* Section IV.A.1.

⁹¹ See NAB Comments at 15; NCTA Comments at 5; The Weather Channel Comments at 5; Letter from Jason E. Rademacher, Counsel for The Weather Channel, to Marlene H. Dortch, Secretary, FCC, Attachment at 8 (Jan. 17, 2013) (“The Weather Channel Jan. 17 *Ex Parte* Letter”).

⁹² See *supra* note 52 and accompanying text. But see Wireless RERC Comments at 12 (“Covered entities should be required to use the primary program stream to transmit both the video and audio of an alert if they do not use a secondary audio stream.”).

⁹³ Comments of National Public Radio, Inc. at 3 (“NPR Comments”). See also Consumer Groups Reply at 3 (agreeing with NPR’s proposal, but noting that there would need to be a reliable way to transmit the text of the emergency information to consumers’ televisions). NPR has worked with the Helen Keller National Center in researching mechanisms to provide accessible media to consumers who are blind or visually impaired. See NPR Comments at 4.

⁹⁴ See Consumer Groups Comments at 3-4; Consumer Groups Reply at 2-3. See also Letter from Blake E. Reid, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Institute for Public Representation, Georgetown Law, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Jan. 22, 2013) (“Consumer Groups Jan. 22 *Ex Parte* Letter”); Letter from Blake E. Reid, Counsel to TDI, Institute for Public Representation, Georgetown Law, to Marlene H. Dortch, Secretary, FCC, at 3-4 (Feb. 15, 2013) (“Consumer Groups Feb. 15 *Ex Parte* Letter”); Letter from Blake E. Reid, Counsel to TDI, Institute for Public Representation, Georgetown Law, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Feb. 27, 2013) (“Consumer Groups Feb. 27 *Ex Parte* Letter”); Letter from Blake E. Reid, Counsel to TDI, Institute for Public Representation, Georgetown Law, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Mar. 4, 2013) (“Consumer Groups Mar. 4 *Ex Parte* Letter”); Letter from Blake E. Reid, Counsel to TDI, Institute for Public Representation, Georgetown Law, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Mar. 7, 2013) (“Consumer Groups Mar. 7 *Ex Parte* Letter”); Letter from Blake E. Reid, Counsel to TDI, Institute for Public Representation, Georgetown Law, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Mar. 11, 2013) (“Consumer Groups Mar. 11 *Ex Parte* Letter”). Consumer Groups argue that the VPAAC Second Report did not fully consider (continued....)

Groups, this issue can be addressed by requiring the transmission of emergency information in both the secondary audio stream and via closed captions, which would allow persons who are hearing and vision impaired to enlarge the font of the crawl and change the font color.⁹⁵ Although we recognize the importance of accessibility by individuals who are both blind or visually impaired and deaf or hard of hearing, we agree with NAB that we do not have a sufficient record on these complex issues to resolve them in this proceeding.⁹⁶ Given the importance of these issues, the Commission will consider in the future what can be done to better serve this community.

23. *Content of Emergency Information.* We do not require a verbatim aural translation of textual emergency information.⁹⁷ At the same time, however, we require that the information presented aurally accurately and effectively communicate to consumers who are blind or visually impaired the critical details about a current emergency and how to respond to it to the same extent that this information is conveyed textually, *i.e.*, it must provide the emergency information required under Section 79.2(a)(2).⁹⁸ We note that this requirement is consistent with the VPAAC's recommendation on this issue.⁹⁹ NAB, Kelly Pierce, The Weather Channel, and Verizon agree that the rules should not require a verbatim translation.¹⁰⁰ In particular, NAB argues that broadcasters should have editorial discretion in the aural

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the needs of individuals who are both blind or visually impaired and deaf or hearing impaired. *See* Consumer Groups Comments at 5.

⁹⁵ *See* Consumer Groups Comments at 6-7; Consumer Groups Reply at 3; Consumer Groups Jan. 22 *Ex Parte* Letter at 2. Consumer Groups argue that there would be no additional burden on apparatus manufacturers beyond the requirements imposed in the *IP Closed Captioning Order*, and that the burden on video programming distributors would be minimal because they can generate closed captions through an automated process using the same text from the visual crawl or from the text processed through TTS. *See* Consumer Groups Comments at 7. In contrast, NAB indicates that there would be significant technical complexities involved in providing emergency information through closed captioning, in addition to other issues that would make use of closed captioning for emergency information problematic. *See* NAB Reply at 7-8 and n. 28.

⁹⁶ *See* NAB Reply at 6-7. *See also* NAB Jan. 15 *Ex Parte* Letter at 2; Consumer Groups Jan. 22 *Ex Parte* Letter at 2 (noting “that crafting solutions to make emergency information universally accessible to people with both visual and hearing disabilities is a difficult task that will require careful consideration of the scope of emergency information, the specific technological methods to be utilized, and the allocation of cost and responsibility among various stakeholders”). In addition, we do not address here Consumer Groups’ suggestion that we revise Section 79.2(b)(1)(i) of the current rule to require the use of real-time closed captioning for news programs shown in areas that are outside of the top 25 markets, because this matter is outside the scope of this proceeding and is being addressed in a separate proceeding before the Commission. *See* Consumer Groups Comments at 6; *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking*, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005).

⁹⁷ *See NPRM*, 27 FCC Rcd at 14738, ¶ 13.

⁹⁸ *See* 47 C.F.R. § 79.2(a)(2) and accompanying note. Specifically, emergency information must contain “[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.” 47 C.F.R. § 79.2(a)(2).

⁹⁹ VPAAC Second Report: Access to Emergency Information at 10 (“The aural information does not need to be identical to the visual information that appears as a crawl or scroll across the TV screen, but should provide understandable and comprehensive audible content corresponding to the crawl or scroll.”). *See also NPRM*, 27 FCC Rcd at 14738, ¶ 13.

¹⁰⁰ *See* NAB Comments at 13 (stating that the emergency information rules need not require verbatim translation of crawls, so long as the information provided is substantially the same); NCTA Comments at 5-6 (arguing that the Commission should require emergency information provided aurally to include only the “critical details,” as defined in the rules); Pierce Comments at 2-4 (citing scientific research to support the finding that “information presented in audio form can and in fact should be different from that presented in visual form”); The Weather Channel (continued....)

transcription of emergency crawls because requiring a verbatim translation could divert broadcasters' attention from "complete and rapid dissemination of emergency information to policing the exact language in their screen crawls," and could lead to unnecessarily long aural announcements that may unduly interrupt video description.¹⁰¹ However, ACB and the Rehabilitation Engineering Research Center for Wireless Technologies ("Wireless RERC") recommend that the emergency information provided aurally be identical to the information that is provided textually to "ensure equivalent access" for consumers who are blind or visually impaired.¹⁰² We find persuasive The Weather Channel's recommendation that "the standard for the aural alert should be the same as the standard for the scroll alert, *i.e.*, both should be required to include the critical details of the emergency and instructions about how to respond."¹⁰³ We believe that requiring information presented aurally to accurately and effectively convey the critical details of an emergency and how to respond to it as required by Section 79.2(a)(2) appropriately addresses the concerns set forth by ACB and the Wireless RERC that consumers who are blind or visually impaired have equivalent access to the critical details of emergencies, while at the same time giving stations and MVPDs flexibility to carry out their responsibilities most effectively. We will entertain complaints from consumers that aural descriptions of emergency crawls are inadequate in this regard.

24. In the *NPRM*, we also asked what requirements should apply to the aural description of visual but non-textual emergency information (*e.g.*, maps or other graphic displays).¹⁰⁴ Similar to the approach we adopt for textual emergency information, we find that 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, as set forth in Section 79.2(a)(2).¹⁰⁵ We disagree with NAB's contention that the rules should

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 Comments at 5 ("It should not be required that aural emergency warnings be verbatim recitations of the words contained in the scroll."); Verizon Reply at 4 (agreeing with NAB that the aural description of an emergency crawl should be required to provide substantially the same information which could be in summary form). *See also* The Weather Channel Jan. 17 *Ex Parte* Letter, Attachment at 7; Letter from Jason E. Rademacher, Counsel for The Weather Channel, to Marlene H. Dortch, Secretary, FCC, at 1-3 (Feb. 1, 2013) ("The Weather Channel Feb. 1 *Ex Parte* Letter").

¹⁰¹ NAB Comments at 13.

¹⁰² *See* ACB Comments at 3 (arguing further that there may be circumstances in which more context or description in addition to the text of the emergency crawl is needed to fully convey information); Wireless RERC Comments at 10 (arguing further that "[a]bbreviations should not be used because they may impede understanding of the content").

¹⁰³ The Weather Channel Comments at 5.

¹⁰⁴ *NPRM*, 27 FCC Rcd at 14738, ¶ 13.

¹⁰⁵ ACB suggests that the verbal rendition of information provided in maps, photographs, or other illustrative data should be conveyed meaningfully, using the Department of Justice's ("DOJ") "effective communication" standard. ACB Comments at 3. The Wireless RERC argues that covered entities should not exactly replicate non-textual, visual information in the audio, but should use the attributes of alternative text to describe what is being shown consistently with the purpose of the image. Wireless RERC Comments at 10-11 ("For example, if a map of Georgia is shown depicting the direction a storm is moving, and that information is not provided in the text-crawl and simultaneous audio, then the map should be described, noting the areas impacted by the path of the storm. It is not necessary to describe in full, the entire map. . . ."). We believe our approach to require the critical details of non-textual emergency information to be provided is consistent with ACB's and the Wireless RERC's proposals because it will ensure that meaningful and useful details are conveyed to consumers. We also find that, as proposed by ACB, our approach is consistent with DOJ's "effective communication" standard that is applied to state and local governments under Title II of the Americans with Disabilities Act ("ADA"). This ADA standard requires a public entity to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a)(1). As (continued....)

not impose any requirement for visual but non-textual emergency information to be described aurally because such a requirement could “limit[] the [broadcaster’s] use of such graphic information in order to comply with the rules,” and “could be infeasible if automated TTS is used.”¹⁰⁶ The record does not support a finding that it would be overly burdensome for covered entities to provide an aural description of the critical details provided in a graphic display (such as a map) 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 the map). Further, even if a broadcaster employs TTS technologies, the critical details of the emergency information conveyed in the graphic display can be included in the text that will be converted to speech using such technologies, provided that the description of non-textual emergency information is inserted as text before the TTS conversion takes place. Accordingly, we require that an aural description of such emergency information be provided on the secondary audio stream.

25. We require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full to ensure that consumers are able to hear all of the information after they switch from the main program audio to the secondary audio stream. Commenter Kelly Pierce explains that “many blind people are tuned to the main audio stream because of its superior audio quality,” and these individuals will need time to switch from the main program audio to the secondary audio stream to obtain emergency information.¹⁰⁷ For this reason, Mr. Pierce recommends, and no one opposes, that the Commission require a delay in providing emergency information on the secondary audio stream or, alternatively, require the information to be provided immediately on the secondary audio stream but repeated so that consumers who are blind or visually impaired can hear it at least twice.¹⁰⁸ Because there may be individuals who are blind or visually impaired who are already tuned to the secondary audio stream (e.g., for video description), we do not think it is appropriate to impose a delay on airing emergency information on the secondary audio stream. Instead, we believe the better approach is to require covered entities to convey emergency information at least twice on the secondary audio stream so that individuals switching from the main program audio will be able to hear the emergency information in its entirety. To better assist consumers who are blind or visually impaired, we encourage providers of emergency information, in appropriate circumstances and at their discretion, to convey the emergency information more than twice. This would be particularly appropriate during portions of the day when the secondary audio stream is silent or merely duplicates the main program audio, because there would be no potential to disrupt the provision of video-described programming on the secondary audio channel during those times, a concern that was raised generally by NAB,¹⁰⁹ and because individuals who are blind or visually impaired can switch from the secondary audio channel to the main program audio if they prefer to hear audio associated with the underlying programming.

26. *Priority of Emergency Information.* We find that emergency information should be prioritized over all other content on the secondary audio stream. Thus, we revise Section 79.2 to require that aural emergency information supersede all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream.¹¹⁰

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noted above, in paragraph 23, we similarly require the emergency information provided aurally to be as accurate and effective as is the emergency information conveyed textually for people who are able to see. *See supra* ¶ 23.

¹⁰⁶ NAB Comments at 13. *See also* Verizon Reply at 4 (arguing that the Commission should not impose specific requirements for how a map should be aurally communicated, because that determination should be left to the broadcasters).

¹⁰⁷ Pierce Comments at 2.

¹⁰⁸ *Id.*

¹⁰⁹ *See* NAB Comments at 7-8, 15.

¹¹⁰ *See infra* Appendix B (Final Rules), § 79.2(b)(5). *See also* NPRM, 27 FCC Rcd at 14738-39, ¶ 14. NAB argues “that a video-described program intended to count toward a broadcaster’s quarterly requirement will still count, even (continued....)”

Commenters resoundingly support having emergency information take priority over video description or any other content that may be present on the secondary audio stream.¹¹¹ Currently, the Commission's rules prohibit emergency information from blocking video description, and they prohibit video description from blocking emergency information provided by means other than video description.¹¹² Because textual emergency information will be conveyed aurally utilizing the same audio stream as used for video description, the VPAAC recommended eliminating the proscription against emergency information blocking video description.¹¹³ In accordance with the VPAAC's recommendation, we delete the proscription against emergency information blocking video description.¹¹⁴ In the *NPRM*, we proposed to amend Section 79.2(b)(3)(ii) of the current rule to read: "Any video description provided should not block any emergency information."¹¹⁵ After further consideration of this issue, however, we believe that use of the term "*supersede*" here is more appropriate than use of the term "*block*," because "*supersede*" more appropriately applies to the insertion and prioritization of aural programming on the secondary audio stream.¹¹⁶ Thus, we require covered entities to ensure that aural emergency information provided in

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if it is interrupted by an aural conveyance of emergency information that appears in an on-screen crawl." NAB Comments at 16, n. 41. We agree with NAB. Once a covered entity goes to the expense and effort to comply with our video description rules for a particular program, that program should count toward that entity's video description total even if the video description is partially or wholly interrupted by aural emergency information.

¹¹¹ See ACB Comments at 3 (arguing that there is no circumstance in which either video description or alternate language programming should supersede emergency information); AT&T Comments at 3, 6 (arguing that aural emergency information should override all other audio programming on the secondary audio stream, including video description or foreign language); Pierce Comments at 4 ("[I]t is necessary to interrupt any other audio including foreign language translation, a duplicate of the main audio or to play the emergency message when there is normally silence on the secondary audio stream."); Wireless RERC Comments at 11 ("[T]he Wireless RERC agrees that emergency content in the secondary audio stream should take precedence over video description of regular programming."); CenturyLink Reply at 1 (arguing that emergency information should take priority over video description and other information that may be provided on the secondary audio stream); Verizon Reply at 4 (agreeing with ACB that aural emergency information should supersede any other content that is on the secondary audio stream, including video description or foreign language content); Letter from the American Council of the Blind and the American Foundation for the Blind, to Marlene H. Dortch, Secretary, FCC, at 1 (Jan. 24, 2013) ("ACB/AFB Jan. 24 *Ex Parte* Letter") ("Emergency alerts need to take priority over programming that is described."). But see NAB Comments at 15 (stating that "a balance will be required to ensure the broadcast of adequate emergency information without unduly interrupting video description"). NAB also states that the rules should be modified "to eliminate the prohibition on emergency information blocking video description." NAB Comments at 15-16. We agree with the majority of commenters that the provision of emergency information, which is, by definition, "intended to further the protection of life, health, safety, and property," should be prioritized over video description, which is typically provided for prime-time and children's programming. 47 C.F.R. §§ 79.2(a)(2), 79.3(b).

¹¹² 47 C.F.R. § 79.2(b)(3)(ii).

¹¹³ See VPAAC Second Report: Access to Emergency Information at 10-11. See also 47 C.F.R. § 79.3.

¹¹⁴ See VPAAC Second Report: Access to Emergency Information at 10-11. See also NAB Comments at 15-16.

¹¹⁵ *NPRM*, 27 FCC Red at 14738, ¶ 14. See AT&T Comments at 6; NAB Comments at 15-16; Pierce Comments at 4; CenturyLink Reply at 3. The VPAAC recommended that Section 79.2(b)(3)(ii) of the current rule be amended to read: "Any video description provided should not block any emergency information provided by video description or by means other than video description." VPAAC Second Report: Access to Emergency Information at 11. We proposed in the *NPRM* to simplify this language as stated above. See *NPRM*, 27 FCC Red at 14738, ¶ 14.

¹¹⁶ In contrast, the term "*block*," which refers to an obstruction, is appropriate in the context of closed captioning, where the rules are intended to address the overlap of visually presented information, namely closed captioning and visual emergency information. See 47 C.F.R. § 79.2(b)(3)(i) (stating that "[e]mergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by (continued....)

accordance with Section 79.2(b)(2)(ii) of our revised rule *supersedes* all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream.¹¹⁷ This change is consistent with the VPAAC's recommendation and with the record, which support prioritizing emergency information.

27. While we find that emergency information should supersede any other content provided on the secondary audio stream, we do not impose requirements with regard to what should be provided on the secondary audio stream when emergency information is not being provided, aside from our current video description requirements. We note that the VPAAC recommends that covered entities use best efforts to transmit the main program audio on the secondary audio stream when emergency information, video description, or alternate language audio are not present, rather than maintaining a silent channel.¹¹⁸ We agree with this recommendation and find that this approach would enable consumers to tune to the secondary audio stream all of the time, instead of needing to switch back and forth from the main program audio when video description or emergency information is available.¹¹⁹

28. *Provision of Customer Support.* We do not at this time require covered entities to provide specific customer support services to assist consumers who are blind or visually impaired with accessing emergency information on the secondary audio stream, but we seek further comment on this issue. Although expressly raised in the *NPRM*,¹²⁰ there was little comment on this issue. The American Foundation for the Blind ("AFB") argues in favor of imposing requirements for identification and training of appropriate points of contact to assist with accessing emergency information on the secondary audio stream.¹²¹ On the other hand, AT&T argues that covered entities should have the flexibility to educate customers on use of the secondary audio stream,¹²² and NCTA contends that additional rules in this area

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means other than closed captioning"). Although we make no substantive changes to Section 79.2(b)(3)(i) of the current rule, we make a minor revision to change "should" to "does," which is the grammatically appropriate word to use in conjunction with the term "must ensure." See *infra* Appendix B (Final Rules), § 79.2(b)(4) ("Video programming distributors must ensure that emergency information *does* not block any closed captioning and any closed captioning *does* not block any emergency information provided by means other than closed captioning.") (emphasis added).

¹¹⁷ See *infra* Appendix B (Final Rules), § 79.2(b)(5).

¹¹⁸ See VPAAC Second Report: Video Description at 26-27. See also Comments of the Consumer Electronics Association at 3, 11-12 ("CEA Comments"); NAB Comments at 12; Pierce Comments at 5 (asking the Commission to mandate that the main program audio be transmitted on the secondary audio stream when no video description or foreign language translation is present). See, e.g., Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, FCC, Attachment at 2 (Jan. 24, 2013) ("CEA Jan. 24 *Ex Parte* Letter"). But see NCTA Comments at 13-14 (arguing that the Commission should not mandate that a secondary audio channel will contain main program audio rather than silence because it would freeze innovation and because concerns about difficulties switching between streams may be addressed in the proceeding implementing Section 205 of the CVAA).

¹¹⁹ See *NPRM*, 27 FCC Red at 14742, ¶ 22.

¹²⁰ See *id.* at 14737, ¶ 11.

¹²¹ See Comments of the American Foundation for the Blind at 3 ("AFB Comments") (observing that customer support services can be "woefully lacking even in the face of clear requirements," based on experiences in the Section 255 context).

¹²² See AT&T Comments at 4, 8-9 (arguing that such flexibility would allow AT&T to develop innovative means of education, such as accessible videos describing the secondary audio stream, without eliminating the option for individuals to contact customer service). See also Pierce Comments at 4 ("The Commission should encourage broadcast stations to inform viewers about the accessible emergency announcements as part of their overall viewer education about how emergency information is communicated to viewers.").

are unnecessary because “cable operators currently provide customer support for handling video description concerns.”¹²³ Given the lack of detailed comment on this issue, we seek further comment in the attached *Further Notice*.¹²⁴ While we do not prescribe specific requirements for customer support services at this time, we believe that customer service representatives of covered entities should be able to answer consumer questions about accessing emergency information. Additionally, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact, as well as other information about how to seek assistance, on their websites and in other informational materials distributed to the public.

2. Definition of Emergency Information

29. We do not make any substantive revisions to the current definition of emergency information. Emergency information is defined in Section 79.2(a)(2) 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.”¹²⁵ Critical details regarding an emergency “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.”¹²⁶ The definition provides “[e]xamples of the types of emergencies covered,” which “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.”¹²⁷ In the *NPRM*, we asked whether the definition of emergency information should be updated to include additional examples of emergencies.¹²⁸ Of the two commenters who address this issue, NCTA indicates that the Commission should not expand the definition,¹²⁹ and NAB proposes narrowing the definition “to strike an appropriate balance” with other services provided on the secondary audio stream.¹³⁰ Specifically, NAB asks us to apply the definition only to “critically urgent information” and to delete certain categories of emergency information from the list of examples.¹³¹ Given that no party favors

¹²³ NCTA Jan. 18 *Ex Parte* Letter at 2; NCTA Feb. 28 *Ex Parte* Letter at 2; NCTA Mar. 11 *Ex Parte* Letter at 2. See also NCTA Comments at 14.

¹²⁴ See *infra* Section V.

¹²⁵ 47 C.F.R. § 79.2(a)(2).

¹²⁶ Note to 47 C.F.R. § 79.2(a)(2).

¹²⁷ 47 C.F.R. § 79.2(a)(2).

¹²⁸ *NPRM*, 27 FCC Rcd at 14737, ¶ 11.

¹²⁹ See NCTA Comments at 6; NCTA Jan. 18 *Ex Parte* Letter at 1.

¹³⁰ NAB Comments at 7.

¹³¹ See *id.* at 7-8; NAB Jan. 15 *Ex Parte* Letter at 2; NAB Mar. 7 *Ex Parte* Letters at 2; NAB Mar. 8 *Ex Parte* Letter at 2; Letter from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 13, 2013) (“NAB Mar. 13 *Ex Parte* Letter”). Specifically, NAB recommends that we delete “school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather” from the examples of emergency information in Section 79.2(a)(2), because such categories are “helpful, but not critical.” NAB Comments at 7. See also NAB Jan. 15 *Ex Parte* Letter at 2; NAB Mar. 7 *Ex Parte* Letters at 2; NAB Mar. 8 *Ex Parte* Letter at 2; NAB Mar. 13 *Ex Parte* Letter at 2. NAB argues that such a revision will “ensure that video described programming is not continuously disrupted during significant weather events.” NAB Comments at 7. NAB also asks the Commission to specify that “the emergency crawls to be aurally transcribed under the new rules (continued....)”

expanding the definition and because the record presents no compelling reason to expand a definition that has served the public interest for over ten years, we decline to include additional examples in the definition of emergency information. However, we also do not think it is appropriate to narrow the definition in the interest of lessening the impact on other services provided on the secondary audio stream, given the higher priority of emergency information.¹³²

30. We also specifically inquired in the *NPRM* whether severe thunderstorms are currently considered to be emergencies subject to our rule and, to the extent they are covered, whether they should be added to the list of examples in the rule.¹³³ No commenter addresses this question. While we do not explicitly add severe thunderstorms to the list of examples, we interpret the current definition to include severe thunderstorms and other severe weather events because they are similar to other types of emergencies listed as examples in terms of severity and because these events could threaten life, health, safety, and property.¹³⁴

31. Although we reject NAB's recommendation that we modify our current emergency information definition to delete school closings and school bus schedule changes from the list of examples, we revise the requirements applicable to the provision of such information for purposes of the rules adopted in this proceeding. As required by the rule, the visual information regarding school closings and school bus schedule changes aired during non-newscast programming must be made accessible to individuals who are blind or visually impaired (*i.e.*, there must be an aural tone before the crawl on the main program audio, and the information conveyed in the crawl must be preceded by an aural tone and provided aurally on the secondary audio channel), if the school closings and school bus schedule changes result from a current emergency as defined in Section 79.2(a)(2).¹³⁵ We leave it to the good faith judgment of the broadcaster or other covered entity to decide whether school closings and school bus schedule changes result from a situation that is a current emergency based on its severity and potential to threaten life, health, safety, and property.¹³⁶ However, given the potential length of information about school closings and school bus schedule changes and therefore its potential to interfere with video description,¹³⁷ we find that, during a video-described program, covered entities have the option to air a

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will be generally limited to locally-provided (*i.e.*, licensee-provided) information.” *Id.* at 8. We do not think it is necessary to adopt NAB's proposed specification because the rule currently states that Section 79.2 “applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.” 47 C.F.R. § 79.2(b)(2).

¹³² See *supra* ¶ 26.

¹³³ *NPRM*, 27 FCC Rcd at 14737, ¶ 11.

¹³⁴ See *2000 Video Description Order*, 15 FCC Rcd at 15250, ¶ 49 (explaining that “[t]hese examples are intended to provide guidance as to what is covered by the rule and are not intended to be an exhaustive list”).

¹³⁵ See 47 C.F.R. § 79.2(a)(2). The VPAAC recognized that “there is less time sensitivity involved in accessing [] information” such as weather-related school closings, but also concluded that “[e]mergency information . . . that is lengthy, concerns threats that are not serious, or does not involve threats to life or property, should be made accessible in audible format whenever possible.” VPAAC Second Report: Access to Emergency Information at 8.

¹³⁶ We will not sanction broadcasters or other covered entities for a reasonable exercise of their judgment as to whether school closings and school bus schedule changes result from a situation that is a current emergency.

¹³⁷ See NAB Comments at 7. See also ACB/AFB Jan. 24 *Ex Parte* Letter at 1 (agreeing that “lengthy alerts such as school closures can impede described content,” and suggesting that “[h]aving one of these types of announcements per hour when there is described content should suffice”). While we agree with the concern about the potential of school closing and bus schedule change information to impede video description, we believe that, given the typical length and duration of these types of announcements, ACB's and AFB's suggestion to air this information in full once per hour may still significantly interfere with video description and, thus, may not be a feasible solution.

brief audio message on the secondary audio stream at the start of the crawl indicating that this information will be aired at the conclusion of the video-described programming, and to subsequently provide this information aurally on the secondary audio stream at the conclusion of the video-described programming.

C. Responsibilities of Entities Subject to Section 202(a) of the CVAA

32. Congress directed the Commission to “require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.”¹³⁸ Thus, in the *NPRM*, we sought comment on definitions of the terms “video programming providers,” “video programming distributors,” and “program owners,” and we inquired about the roles and responsibilities of these various entities.¹³⁹ We address each of those issues in turn below.

33. *Definition of Video Programming Providers and Video Programming Distributors.* We apply the current definitions for “video programming distributor” and “video programming provider” in Section 79.1 to the emergency information rule, and we find that it is unnecessary to create a separate definition for “program owner.”¹⁴⁰ The emergency information provision in Section 202(a) of the CVAA applies to “video programming provider” and “video programming distributor” “as those terms are defined in [S]ection 79.1” of the Commission’s rules and, accordingly, we need not create new definitions for those terms.¹⁴¹ NAB supports this approach.¹⁴² However, Section 202(a) also references “program owners” without defining this term.¹⁴³ In the *NPRM*, we explained that the definition of “video programming provider” in Section 79.1 includes but is not limited to a “broadcast or nonbroadcast television network *and the owners of such programming.*”¹⁴⁴ Thus, we asked whether it is necessary to separately define a “program owner” for purposes of our implementing regulations, given that the definition of “video programming provider” in Section 79.1 encompasses program owners.¹⁴⁵ No commenter addresses this specific issue. We also sought comment in the *NPRM* on whether to define a “program owner” consistent with the definition of “video programming owner” adopted in the IP closed

¹³⁸ 47 U.S.C. § 613(g)(2).

¹³⁹ See *NPRM*, 27 FCC Rcd at 14739-40, ¶¶ 16-17.

¹⁴⁰ Section 79.1 defines a “video programming distributor” as “[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.” 47 C.F.R. § 79.1(a)(2). We do not need to apply the remainder of the “video programming distributor” definition to the emergency information rule, as that portion is specific to the closed captioning context. See *id.* (“An entity contracting for program distribution over a video programming distributor that is itself exempt from captioning that programming pursuant to paragraph (e)(9) of this section shall itself be treated as a video programming distributor for purposes of this section. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.”). Section 79.1 also defines a “video programming provider” as “[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.” *Id.* § 79.1(a)(3).

¹⁴¹ 47 U.S.C. § 613(g)(2).

¹⁴² NAB Comments at 9.

¹⁴³ 47 U.S.C. § 613(g)(2).

¹⁴⁴ 47 C.F.R. § 79.1(a)(3) (emphasis added). See *NPRM*, 27 FCC Rcd at 14739, ¶ 17.

¹⁴⁵ See *NPRM*, 27 FCC Rcd at 14739, ¶ 17.

captioning context.¹⁴⁶ NAB argues that the Commission should not impose definitions from the IP closed captioning rules in the emergency information context because “[t]hose definitions are unnecessary and unhelpful here,” because, for example, “a [video programming owner], such as [a] network or a syndicator, would not have any knowledge that a licensee was crawling local emergency information over their programming at the station level.”¹⁴⁷ No other commenter addresses this issue. We agree with NAB that is not necessary to use the definition of “video programming owner” from the IP closed captioning rule. The record shows that the entities that typically insert emergency information into crawls are broadcasters, which are already covered as video programming distributors, and that, other than The Weather Channel, which is both a network program owner and video programming provider, program owners do not typically create emergency crawls.¹⁴⁸ Because the current definition of “video programming provider” already includes but is “*not limited to* broadcast or nonbroadcast television network and the owners of such programming,” we interpret this definition to include the owners of any “video programming that is intended for distribution to residential households” by a video programming provider.¹⁴⁹ Thus, we see no public interest benefit in creating a separate definition of the term “program owner.” While not separately defined, however, program owners are subject to applicable accessible emergency information requirements, as explained below.¹⁵⁰

34. *Obligations of Video Programming Providers and Video Programming Distributors.* We revise the emergency information rule to include video programming providers as defined in Section 79.1 (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors. Currently, Section 79.2(b)(1) of our rules provides that video programming distributors must make emergency information accessible to individuals with visual disabilities, but our rules do not currently impose related requirements on video programming providers and program owners.¹⁵¹ However, Section 202 of the CVAA directs us to impose accessible emergency information requirements on video programming providers and program owners, as well as on video programming distributors.¹⁵² In the *NPRM*, we asked for comment on the roles that the various entities listed in Section 202 should play in ensuring that emergency information is conveyed in an accessible manner.¹⁵³ We further inquired whether video programming distributors should hold primary responsibility, with video programming providers and program owners prohibited from interfering with or hindering the conveyance of accessible emergency information, or whether certain responsibilities should be allocated to each of the entities

¹⁴⁶ Specifically, we sought comment in the *NPRM* on whether to define a “program owner” as “any person or entity that either (i) licenses the video programming to a video programming distributor or provider, as those terms are defined in Section 79.1 of the Commission’s rules; or (ii) acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider, as those terms are defined in Section 79.1 of the Commission’s rules.” *Id.* at 14740, ¶ 17. *See also Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, 792, ¶ 7 (2012) (“*IP Closed Captioning Order*”).

¹⁴⁷ NAB Comments at 9.

¹⁴⁸ *See infra* note 156 and accompanying text.

¹⁴⁹ 47 C.F.R. § 79.1(a)(3) (emphasis added).

¹⁵⁰ *See infra* ¶ 36.

¹⁵¹ *See* 47 C.F.R. § 79.2(b)(1).

¹⁵² 47 U.S.C. § 613(g)(2).

¹⁵³ *NPRM*, 27 FCC Rcd at 14739, ¶ 16.

specified in Section 202.¹⁵⁴

35. The record reflects support for allocating responsibility among each of the entities specified in Section 202.¹⁵⁵ A number of commenters emphasize that the allocation of responsibility should be based on the roles that each entity has with regard to making non-newscast emergency information accessible. Specifically, MVPD commenters explain that local broadcasters are the entities that typically create emergency information crawls and scrolls and, therefore, they should be responsible for providing an aural version of this information on the secondary audio stream.¹⁵⁶ According to MVPD commenters, because MVPDs typically have no role in creating or managing the content of visual emergency information, they should not be required to produce the information in an aurally accessible format.¹⁵⁷ Instead, these commenters suggest that MVPDs should be required to pass through aural emergency information that is provided by broadcasters and other video programming providers and owners.¹⁵⁸ This description of the roles of the various entities was not disputed in the record.

36. We conclude that each entity specified in Section 202(a) should be responsible for compliance with the emergency information rule, and we revise the portions of Section 79.2 applicable to accessibility of emergency information for individuals who are blind or visually impaired accordingly to add video programming providers (which includes program owners) and to more clearly specify the obligations of covered entities. First, we find that among video programming distributors and video programming providers, the entity that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone.¹⁵⁹ Second, we find that video programming

¹⁵⁴ *Id.*

¹⁵⁵ See, e.g., AT&T Comments at 3, 7 (arguing that Section 202 obligations should be shared by video programming providers, distributors, and owners); CenturyLink Reply at 3 (agreeing with commenters who support the need for a “shared responsibility” model in which broadcasters and MVPDs have complementary roles in making non-newscast emergency information accessible). See also Consumer Groups Reply at 5 (arguing that the Commission should clarify that the emergency information rules apply to all video programming providers and video programming distributors subject to Section 79.1 of its rules); Consumer Groups Feb. 15 *Ex Parte* Letter at 3 (same); Consumer Groups Feb. 27 *Ex Parte* Letter at 2 (same); Consumer Groups Mar. 4 *Ex Parte* Letter at 2 (same); Consumer Groups Mar. 7 *Ex Parte* Letter at 2 (same); Consumer Groups Mar. 11 *Ex Parte* Letter at 2 (same).

¹⁵⁶ See AT&T Comments at 3, 7; DIRECTV Comments at 6; DISH Network Comments at 2-3; CenturyLink Reply at 1, 3-4; DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter, at 1 and Attachment at 1. NAB explains that television broadcasters use their news and editorial judgment in deciding to overlay scrolled information onto programming via “crawls” as needed. NAB Comments at 2. DIRECTV states that it is not aware of any national cable channels or regional sports networks that provide non-aural emergency information on a localized basis, and that DIRECTV does not provide such emergency information itself. DIRECTV Comments at 3, n. 8. *But see* The Weather Channel Comments at 1-2 (noting that The Weather Channel is a national television network that provides both local and national weather information, including information on severe weather events).

¹⁵⁷ See AT&T Comments at 7; DIRECTV Comments at 4; CenturyLink Reply at 4.

¹⁵⁸ See AT&T Comments at 3, 8; DIRECTV Comments at 2, 5; DISH Network Comments at 2; CenturyLink Reply at 3-4; Verizon Reply at 2; DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter, at 1 and Attachment at 1; Comcast Feb. 19 *Ex Parte* Letter at 2; Comcast Mar. 4 *Ex Parte* Letter at 1; Comcast Mar. 15 *Ex Parte* Letter at 1.

¹⁵⁹ We do not limit this obligation to video programming providers and program owners as some commenters suggest because local broadcasters who typically create emergency crawls are “video programming distributors” by definition, and because we believe that to the extent an MVPD does create a crawl or other visual graphic conveying local emergency information as defined in Section 79.2 and embeds it in non-newscast programming, it should also be responsible for making the visual emergency information aurally accessible. See AT&T Comments at 3, 7; DIRECTV Comments at 6; DISH Network Comments at 2; CenturyLink Reply at 1, 3-4.

distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers. This will allow us to take enforcement action not only against a non-compliant video programming distributor, but also against a program provider or owner that does not comply with its obligation to make visual emergency information accessible to consumers who are blind or visually impaired.¹⁶⁰ We also revise the rule to indicate that both video programming distributors and video programming providers are responsible for ensuring that emergency information supersedes any other programming on a secondary audio channel, with each entity responsible only for its own actions or omissions in this regard.

D. Compliance Deadlines

37. We adopt a deadline of two years from the date of *Federal Register* publication for compliance with the emergency information rules adopted herein. In the *NPRM*, the Commission inquired as to the appropriate time frame for requiring covered entities to convey emergency information in a secondary audio stream and noted that the VPAAC did not reach agreement as to recommended deadlines.¹⁶¹ Few commenters discuss the appropriate compliance deadline, with ACB suggesting a one year deadline¹⁶² and NAB suggesting a phased-in approach ranging from 36 months to 42 months.¹⁶³ While we note ACB's explanation that there is an existing infrastructure for providing content via the secondary audio channel,¹⁶⁴ we also find that even stations that already use a secondary audio stream may

¹⁶⁰ NAB argues that the rules should ensure that broadcasters' aural emergency messages are not overridden by aural messages provided by an MVPD, and that broadcasters should not be subject to a finding of non-compliance if emergency information provided by the broadcaster is interrupted or overridden by an MVPD carrier. NAB Comments at 16 and n. 43. We believe our rules address these concerns because they assign liability for non-compliance based on each covered entity's acts or omissions, as explained in paragraph 36. To the extent aural emergency information provided by a broadcaster is interrupted or overridden by aural emergency information provided by another covered entity, the broadcaster can raise this claim as a defense to any complaint or enforcement action. In addition, MVPDs are prohibited from altering a broadcaster's video feed, and the record indicates that MVPDs do not typically create local emergency information crawls, so we expect this problem to be extremely rare. See *supra* notes 157-58 and accompanying text; DIRECTV Comments at 4 (citing 17 U.S.C. §§ 111(c)(3), 122(e)). See also 47 C.F.R. §§ 76.62(e)-(f), 76.64(j), 76.92(a).

¹⁶¹ *NPRM*, 27 FCC Rcd at 14736-37, ¶ 11 and n. 61. See VPAAC Second Report: Access to Emergency Information at 13.

¹⁶² ACB Comments at 2. See also ACB/AFB Jan. 24 *Ex Parte* Letter at 1 (requesting an interim solution in the next 12 months).

¹⁶³ NAB Comments at 19-20; NAB Reply at 5; NAB Jan. 15 *Ex Parte* Letter at 1, n. 1; Letter from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 2 and n. 2 (Jan. 29, 2013) ("NAB Jan. 29 *Ex Parte* Letter"); NAB Mar. 7 *Ex Parte* Letters at 1, n. 1; NAB Mar. 8 *Ex Parte* Letter at 1, n. 1; NAB Mar. 13 *Ex Parte* Letter at 1, n. 1. Specifically, NAB proposes a 36-month compliance deadline for broadcasters in the top 25 markets that have a secondary audio stream. NAB Comments at 19; NAB Reply at 5; NAB Jan. 15 *Ex Parte* Letter at 1, n. 1; NAB Mar. 7 *Ex Parte* Letters at 1, n. 1; NAB Mar. 8 *Ex Parte* Letter at 1, n. 1; NAB Mar. 13 *Ex Parte* Letter at 1, n. 1. For broadcasters in the top 25 markets that do not yet have a secondary audio stream, and for broadcasters in smaller markets, NAB proposes a 42-month compliance deadline. NAB Comments at 19-20; NAB Reply at 5; NAB Jan. 15 *Ex Parte* Letter at 1, n. 1; NAB Mar. 7 *Ex Parte* Letters at 1, n. 1; NAB Mar. 8 *Ex Parte* Letter at 1, n. 1; NAB Mar. 13 *Ex Parte* Letter at 1, n. 1. Further, NAB requests that the Commission provide the Media Bureau with authority to grant extensions of an additional six months to one year for broadcasters outside of the top 25 markets that are unable to meet the deadline. NAB Comments at 20, n. 54; NAB Reply at 5, n. 19.

¹⁶⁴ ACB Comments at 2. See also ACB/AFB Jan. 24 *Ex Parte* Letter at 1. But see NAB Reply at 4-5 (explaining that the infrastructure does not currently exist for secondary audio "merely because the first phase of implementing video description has commenced," which Congress recognized by providing a "multiyear ramp-up requirement for secondary audio service when it established the market based statutory deadlines for video description") (footnote (continued....))

find it necessary to take a number of steps to achieve compliance, such as: (1) implementing software that transfers crawls into text that can be synthesized into audio; (2) integrating the software with the station's computer system; and (3) testing the system.¹⁶⁵ However, we find that 36 months is an unnecessarily long period of time to achieve these steps, given that in prior proceedings we have found that software and product development, along with time for testing and implementation, are achievable within a two year period.¹⁶⁶ Accordingly, based on our review of the record, we conclude that a compliance deadline of two years after *Federal Register* publication is reasonable. We decline to implement a phased-in approach with a later deadline for stations that do not currently have a secondary audio stream, because we expect such stations to work concurrently to establish their secondary audio streams and to take other necessary steps towards compliance.

38. *The Weather Channel Waiver for Emergency Information on Cable Systems.* The Weather Channel expresses unique concerns regarding the compliance deadline. The Weather Channel is a nationally distributed programming network that provides not only national weather information, but also localized weather information, including breaking weather news and alerts, to its subscribers nationwide, which makes it a video programming provider covered by the revised emergency information rule.¹⁶⁷ To ensure that viewers are able to see locally relevant weather information on cable systems, including information on severe weather emergencies, The Weather Channel has deployed thousands of its "WeatherSTAR" devices¹⁶⁸ in cable headends throughout the country, with six different generations of these devices in service.¹⁶⁹ While the most recent models are capable of providing emergency

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omitted); Letter from David J. Wittenstein, Counsel for The Weather Channel, to Marlene H. Dortch, Secretary, FCC, at 1 (Jan. 16, 2013) (expressing support for NAB's comments regarding the time necessary to comply with the proposed rules); DIRECTV Feb. 7 *Ex Parte* Letter at 1.

¹⁶⁵ See NAB Reply at 4 ("[T]he Commission's chosen method for implementing the CVAA requires the specification, development, manufacturing, acquisition, testing and deployment of entirely new hardware and software in the broadcast plant."). *But see* ACB/AFB Jan. 24 *Ex Parte* Letter at 1 (rejecting broadcasters' claim that emergency alerts are created as images, not text and, therefore, that a device to translate those images to TTS must be created). Contrary to the suggestion of ACB and AFB, the record indicates that broadcasters currently use graphics machines that generate on-screen crawls and will need to work with vendors to develop an interface solution that will translate graphics into text. *See, e.g.*, NAB Jan. 29 *Ex Parte* Letter at 1; NAB Mar. 7 *Ex Parte* Letters at 1-2, and Attachment; NAB Mar. 8 *Ex Parte* Letter at 1-2, and Attachment; NAB Mar. 13 *Ex Parte* Letter at 1-2, and Attachment. However, we note that at least one entity already has developed software that turns characters input as an image into text. *See* Letter from Larry Goldberg, Director, Carl and Ruth Shapiro Family National Center for Accessible Media ("NCAM"), to Marlene H. Dortch, Secretary, FCC, at 1-2 and Attachment (Jan. 18, 2013) ("NCAM Jan. 18 *Ex Parte* Letter").

¹⁶⁶ *See, e.g.*, *IP Closed Captioning Order*, 27 FCC Rcd at 859, ¶ 122 and n. 495 ("As the Commission has repeatedly determined, manufacturers generally require approximately two years to design, develop, test, manufacture, and make available for sale new products."). *See also* NCAM Jan. 18 *Ex Parte* Letter, at 1-2 and Attachment (noting that NCAM has "developed procedures for enabling real-time conversion of on-screen text into speech output," "worked with broadcast stations to make this data available via the secondary audio program," developed "methods for linking text with graphics, and for exporting text to speech synthesizers," and developed "prototype software utilities that import data from a professional broadcast generator . . . then extract, transform and prepare it . . . for speech output").

¹⁶⁷ The Weather Channel Comments at 1-2. The Weather Channel also operates Weatherscan, a 24-hour all-local weather network. *Id.* at 1.

¹⁶⁸ The Weather Channel transmits local weather information for the entire country in a single, satellite-delivered data stream, and its WeatherSTAR device "filters the national satellite data stream and permits only geographically relevant information to be delivered to each viewer." *Id.* at 2, n. 3.

¹⁶⁹ *See id.* at 2, 4; The Weather Channel Jan. 17 *Ex Parte* Letter, Attachment at 2, 5.

information aurally, none is currently capable of using a secondary audio stream to do so.¹⁷⁰ The Weather Channel estimates that it would need at least 30 months to comply with the requirements adopted herein for cable systems.¹⁷¹

39. We grant The Weather Channel a six-month waiver beyond our established compliance deadline of the requirement to provide aural emergency information on a secondary audio stream when local emergency information is provided visually during The Weather Channel's programming on cable systems.¹⁷² Thus, The Weather Channel will have 30 months to comply with this requirement. We conclude that there is good cause to support this waiver because The Weather Channel will need to upgrade or replace all of its WeatherSTAR devices to provide emergency information aurally on a secondary stream, as required herein.¹⁷³ As a condition of the waiver, however, we require that as of the general two-year compliance deadline, The Weather Channel must provide its local emergency information on cable systems in a manner that is accessible to individuals who are blind or visually impaired on devices that are capable of providing aural alerts, but it need not use the secondary audio channel to do so prior to the end of the waiver period.¹⁷⁴

40. We also grant The Weather Channel a six-month waiver beyond the general compliance deadline from our rule requiring covered entities to provide all of the critical details of an emergency that are included in the text when it provides local emergency information visually on cable systems. During the six-month waiver period, The Weather Channel will be permitted instead to provide a limited aural announcement about the emergency that is reported.¹⁷⁵ We conclude that there is good cause to support this temporary waiver because, as The Weather Channel explains, if it is required to provide an aural announcement on its main programming that includes all of the critical details of an emergency and how to respond, this "would lead to the complete disruption of TWC programming – often for hours at a time

¹⁷⁰ See The Weather Channel Comments at 4; The Weather Channel Feb. 1 *Ex Parte* Letter at 1 (stating that WeatherSTAR devices "currently lack the capability of generating aural vocalizations of TWC's visual crawl alerts on a secondary audio programming channel"). The Weather Channel indicates that approximately 12 percent of WeatherSTARs could be upgraded to implement a secondary audio channel, while the remaining 88 percent of devices would need to be replaced to implement a secondary audio channel, at an estimated cost of at least \$14 million, which is largely non-recoverable. The Weather Channel Comments at 4-5. See also The Weather Channel Jan. 17 *Ex Parte* Letter, Attachment at 7; The Weather Channel Feb. 1 *Ex Parte* Letter at 1.

¹⁷¹ The Weather Channel Comments at 6-7. See also *id.* at 7-8 ("In some cases, a brief extension may be warranted to ensure that the new requirements are implemented in a measured, reasonable way that does not compromise service for all viewers as the cost for expanding access.") (footnote omitted); The Weather Channel Feb. 1 *Ex Parte* Letter at 4-5. But see The Weather Channel Jan. 17 *Ex Parte* Letter, Attachment at 8 (indicating that "The Weather Channel needs 18-24 months to identify and fully implement a solution").

¹⁷² 47 C.F.R. § 1.3.

¹⁷³ *Id.*; The Weather Channel Comments at 6-7. See also *Implementation of Video Description of Video Programming*, Waiver Order, 16 FCC Rcd 19784 (2001) (granting a limited waiver of the aural tone requirement in Section 79.2 to MVPDs that receive emergency information warnings from The Weather Channel via its Weather Star III and Weather Star Jr. computers).

¹⁷⁴ The Weather Channel asks for flexibility in how it will make emergency information accessible to individuals who are blind or visually impaired. See The Weather Channel Comments at 5; The Weather Channel Jan. 17 *Ex Parte* Letter at 8 ("The Weather Channel needs to be able to provide a . . . solution that does not necessarily utilize the [secondary audio] channel. . . ."); The Weather Channel Feb. 1 *Ex Parte* Letter at 5.

¹⁷⁵ See The Weather Channel Comments at 6 (stating that "[a]t this time, TWC's most advanced WeatherSTARs already are capable of providing aural alerts along with on-screen scrolls, but these alerts are very limited, and certainly are not verbatim duplications of the on-screen scroll alert"); The Weather Channel Feb. 1 *Ex Parte* Letter at 3.

– during many alerts.”¹⁷⁶ At the end of the waiver period,¹⁷⁷ we require The Weather Channel to be fully compliant with the emergency information rules adopted herein for all of its programming on cable systems.

41. *DIRECTV Waiver for Emergency Information from The Weather Channel.* We also grant DIRECTV a 12-month waiver of the requirement to provide aural emergency information when local emergency information is provided visually during The Weather Channel’s programming on DIRECTV systems, as well as a waiver of the following requirements on DIRECTV’s systems: (1) providing aural emergency information on a secondary audio channel; (2) providing all of the critical details of an emergency that are included in the text; and (3) providing audio functionality on all set-top boxes.¹⁷⁸ The record indicates that DIRECTV faces its own unique challenges to making The Weather Channel’s localized weather information aurally accessible to DIRECTV’s customers, and that use of a secondary audio stream to provide detailed emergency information in the DIRECTV context is not feasible. We believe that these challenges justify additional time for implementation. Currently, DIRECTV has an “interactive application through which it . . . provides visual emergency information to subscribers as they watch The Weather Channel.”¹⁷⁹ DIRECTV’s application “enables the set-top box to pull localized alerts from the national Weather Channel feed for the zip code provided by the subscriber,” but currently, “there is no audio accompanying this information.”¹⁸⁰ DIRECTV explains that it needs a waiver for several reasons. First, if the Commission requires DIRECTV to make The Weather Channel’s localized information available on the secondary audio stream, DIRECTV says that it would “face considerable

¹⁷⁶ The Weather Channel Feb. 1 *Ex Parte* Letter at 2 (“If TWC were required to provide verbatim vocalizations of these messages whenever they appear as crawls, TWC’s main programming could be interrupted for hours at a time, potentially interfering with actual live coverage of the emergency at hand.”).

¹⁷⁷ The waivers will expire 30 months from the date of *Federal Register* publication.

¹⁷⁸ The waiver applies only to DIRECTV and not to DISH Network because DIRECTV “provides visual emergency information to subscribers as they watch The Weather Channel” as a linear program provided by DIRECTV. Letter from William M. Wiltshire, Counsel for DIRECTV, LLC, to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 7, 2013) (“DIRECTV/DISH Network Mar. 7 *Ex Parte* Letter”). Subscribers are able to do this by accessing an interactive application via their remote control. Letter from William M. Wiltshire, Counsel for DIRECTV, LLC, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 22, 2013) (“DIRECTV Feb. 22 *Ex Parte* Letter”). In contrast, DISH Network does not currently provide visual emergency alerts to subscribers that watch The Weather Channel via DISH Network’s linear programming. Instead it “offers a standalone application for The Weather Channel, which is accessible in the interactive features of select DISH set-top box models with a broadband Internet connection” that “is not integrated with The Weather Channel linear TV channel.” DIRECTV/DISH Network Mar. 7 *Ex Parte* Letter at 1. Thus, DISH Network is not providing visual emergency information during The Weather Channel’s video programming that would make it subject to the emergency information requirements adopted herein. Additionally, while in the cable context discussed above we grant a waiver to The Weather Channel because of the additional time necessary for it to provide localized emergency information via the secondary audio stream, here we grant a waiver to DIRECTV and not The Weather Channel because, as DIRECTV explains, “The Weather Channel does not itself include any textual emergency alert information that would be subject to the rules,” and “[i]t is only the applications provided by the [DBS] distributors that make such alerts available at all.” *Id.* at 2.

¹⁷⁹ *Id.* at 1. See also The Weather Channel Jan. 17 *Ex Parte* Letter, Attachment at 6-7. The Weather Channel states that DBS providers “have not traditionally provided access to their application data API.” *Id.* at 7. See also The Weather Channel Feb. 1 *Ex Parte* Letter at 5.

¹⁸⁰ DIRECTV Feb. 22 *Ex Parte* Letter at 1-2. When DIRECTV subscribers are tuned to The Weather Channel, local weather alerts for the viewing area are “presented as a visual weather alert banner at the top of the screen,” accompanied by three aural tones, along with a visual direction to press the red button on the handheld remote to access an alert page with additional detail related to the weather conditions in the area. *Id.* See also DIRECTV/DISH Network Mar. 7 *Ex Parte* Letter at 1-2.

challenges” because it “transmits national cable channel[s] on a nationwide satellite beam.”¹⁸¹ Second, DIRECTV states that it would need three years to “enable a majority of its set-top boxes with . . . emergency audio capability.”¹⁸² Third, DIRECTV reports that this functionality cannot be implemented on all DIRECTV set-top boxes.¹⁸³ Fourth, while it is possible to add audio messages to many of its set-top boxes to capture the nature of local weather emergencies presented visually on The Weather Channel, DIRECTV explains that those audio messages cannot be as detailed as the emergency information that is presented visually because “constraints imposed by the bandwidth available in the satellite network and processing power in the set-top box, as well as the potential lack of a broadband connection to the subscriber’s home, limit the amount of information that can be presented aurally.”¹⁸⁴

42. For the various reasons enumerated by DIRECTV, we grant DIRECTV a 12-month waiver beyond our established compliance deadline of the requirement to provide an aural presentation of local emergency information that is provided visually during The Weather Channel’s programming on DIRECTV systems, so that DIRECTV has the extra time it needs to enable audio functionality in its set-top boxes.¹⁸⁵ This waiver will extend until the date 36 months from *Federal Register* publication. We believe that there is good cause to permit DIRECTV an additional year beyond the general compliance deadline to comply with the requirement to provide an aural presentation of The Weather Channel’s local emergency information because its current set-top boxes are not capable of providing aural emergency information. DIRECTV states that it will take three years to enable audio functionality in certain set-top boxes because adding such functionality “require[s] a new design to deliver the necessary audio files, as well as additional satellite bandwidth”¹⁸⁶ For these reasons, we find a temporary waiver warranted. We note, however, that we may revoke or modify this waiver if circumstances change such that the waiver is no longer in the public interest.

43. We also grant DIRECTV a waiver of the requirement to provide aural emergency information on a secondary audio channel and the requirement to provide all of the critical details of an emergency that are included in the text when local emergency information is provided visually during The Weather Channel’s programming on DIRECTV systems. We are persuaded that national cable channels are carried on a nationwide satellite beam, not on localized spot beams, and thus, carriage of localized audio streams for The Weather Channel is not feasible on DIRECTV systems.¹⁸⁷ At a minimum, consistent with DIRECTV’s proposal, we require the aural version of the emergency

¹⁸¹ DIRECTV Feb. 22 *Ex Parte* Letter at 1.

¹⁸² *Id.* at 3.

¹⁸³ *Id.* For example, emergency audio functionality cannot be implemented on set-top boxes used for standard definition services. *Id.*

¹⁸⁴ DIRECTV/DISH Network Mar. 7 *Ex Parte* Letter at 1. DIRECTV proposes to pre-load audio messages in many of its set-top boxes that will “capture the nature of the weather emergency.” DIRECTV Feb. 22 *Ex Parte* Letter at 2. This approach would involve the capability to provide only a very brief audio message with limited details about the emergency (e.g., “A tornado watch is in effect for your area”), and would not include more specific information about the location or times of the emergency. *Id.* DIRECTV argues that more specific locational information is unnecessary because the on-screen alert will only be picked up by set-top boxes in the zip codes affected by the emergency. *Id.*

¹⁸⁵ *Id.* at 2-3.

¹⁸⁶ *Id.* at 3.

¹⁸⁷ *Id.* at 1. As noted above, DISH Network is not providing visual emergency information during The Weather Channel’s video programming that would make it subject to the emergency information requirements adopted herein and, therefore, it does not need a waiver of the requirement to provide an aural presentation of visual emergency information on a secondary audio stream.

information that DIRECTV provides to capture the nature of the emergency (*e.g.*, “A tornado watch is in effect for your area”), and we require DIRECTV to provide that aural version to viewers whose set-top boxes are associated with zip codes in the affected area. We note that local weather alerts generated by The Weather Channel’s application are provided only to subscribers in the zip codes affected by the emergency and, thus, all subscribers, including subscribers who are blind or visually impaired, would know that the emergency is taking place in the local viewing area.¹⁸⁸ We recognize that, as a technical matter, it is not feasible for DIRECTV to provide more specific information such as individual localities affected and times of the emergency, because, as DIRECTV explains, currently “the satellite capacity and other resources necessary to convey that additional information . . . would be prohibitive.”¹⁸⁹

44. Finally, we grant DIRECTV a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information.¹⁹⁰ In this regard, however, we condition such relief by requiring DIRECTV to provide, upon request and at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require reasonable documentation of disability as a condition to providing the box at no additional cost.¹⁹¹

45. Thus, as of the date 36 months from *Federal Register* publication, DIRECTV must provide an aural presentation of visual emergency information displayed on The Weather Channel. DIRECTV is not required to use the secondary audio channel to provide an aural presentation of visual emergency information displayed on The Weather Channel, and it may use limited aural messages, in accordance with its proposal. Additionally, as explained above, DIRECTV need not provide this functionality on all of its set-top boxes, but it must provide at no additional cost to customers who are blind or visually impaired a set-top box model that is capable of providing the aural emergency information. In granting this waiver, we are guided by Congress’s directive to consider the unique technical challenges faced by DBS providers when promulgating rules.¹⁹² We believe that the costs of requiring DIRECTV to comply fully with these rules would outweigh the benefits. As DIRECTV has mentioned, if it “finds that it cannot comply with requirements imposed in this proceeding, it may have to discontinue [The Weather Channel] application.”¹⁹³ We believe that DIRECTV is providing a critical service to its subscribers and we want to ensure that our regulations do not impede its ability to continue offering these localized emergency alerts. At the same time, we note that we may revoke or modify these waivers if circumstances change such that the waivers are no longer in the public interest.¹⁹⁴

¹⁸⁸ *Id.* at 1-2. See also Letter from William M. Wiltshire, Counsel for DIRECTV, LLC, to Marlene H. Dortch, Secretary, FCC, at 1 (Feb. 28, 2013).

¹⁸⁹ DIRECTV Feb. 22 *Ex Parte* Letter at 2. See also DIRECTV/DISH Network Mar. 7 *Ex Parte* Letter at 1.

¹⁹⁰ DIRECTV Feb. 22 *Ex Parte* Letter at 3.

¹⁹¹ For example, we believe that documentation from any professional or service provider (*e.g.*, a social worker) with direct knowledge of the individual’s disability would be reasonable. See, *e.g.*, *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 26 FCC Rcd 5640, 5653-54, ¶¶ 31-32 (2011) (“requiring individuals seeking equipment under the NDBEDP to provide verification from any practicing professional that has direct knowledge of the individual’s disability,” who “must be able to attest to the individual’s disability”).

¹⁹² See House Committee Report at 31; *supra* note 81 and accompanying text.

¹⁹³ DIRECTV/DISH Network Mar. 7 *Ex Parte* Letter at 2.

¹⁹⁴ It is possible that the Commission could adopt requirements in its implementation of Sections 204 and 205 of the CVAA that supersede the terms of this waiver. In that case, DIRECTV must comply with the rules adopted pursuant to these sections. For example, Section 205 of the CVAA directs the Commission to require that on-screen text menus and guides for the display or selection of multichannel video programming on navigation devices (continued....)

E. Complaint Procedures

46. We revise the complaint procedures for emergency information contained in Section 79.2(c) of the Commission's rules to include video programming providers, to indicate that the complaint should be transmitted to the Consumer and Governmental Affairs Bureau, and to add the Commission's online informal complaint filing system as a method of transmitting a complaint to the Commission.¹⁹⁵ In the *NPRM*, the Commission asked if its proposal to amend the emergency information requirements in Section 79.2 of the Commission's rules necessitates changes to the existing complaint procedures.¹⁹⁶ No commenter addresses this issue. Because we are revising the rule to include video programming providers as responsible parties,¹⁹⁷ we revise Section 79.2(c) to indicate that complaints can be filed against video programming providers, as well as video programming distributors.

47. Pursuant to the revised rule, a complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability.¹⁹⁸ The complaint should include the name of the video programming distributor or the video programming provider against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency.¹⁹⁹ The Commission will notify the video programming distributor or the video programming provider of the complaint, and the distributor or the provider will reply to the complaint within 30 days.²⁰⁰

IV. SECTION 203 OF THE CVAA

48. Section 203 of the CVAA directs the Commission to impose certain emergency information and video description requirements on apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound.²⁰¹ The Commission must prescribe these requirements by October 9, 2013.²⁰² The Section 203 regulations we adopt must include "any technical standards, protocols, and procedures needed for the transmission of" video description and emergency information.²⁰³ Below we set forth requirements for apparatus pertaining to emergency information and video description, and we specify what apparatus are subject to these obligations. Our Section 203 discussion is focused on the availability of secondary audio streams because that is both the existing

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 provided by MVPDs to their subscribers "are audibly accessible in real-time upon request by individuals who are blind or visually impaired." 47 U.S.C. § 303(bb)(1). The CVAA provides that, with respect to this requirement, the Commission shall provide affected entities with "not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements." Pub. L. No. 111-260, § 205(b)(6)(A)(ii).

¹⁹⁵ 47 C.F.R. § 79.2(c). The Consumer and Governmental Affairs Bureau reserves the discretion to refer complaints that reveal a pattern of noncompliance to the Commission's Enforcement Bureau.

¹⁹⁶ *NPRM*, 27 FCC Rcd at 14739, ¶ 15.

¹⁹⁷ *See supra* Section III.C.

¹⁹⁸ *Infra* Appendix B (Final Rules), § 79.2(c).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ 47 U.S.C. §§ 303(u), (z), 330(b).

²⁰² Pub. L. No. 111-260, § 203(d). *See supra* Section II.

²⁰³ Pub. L. No. 111-260, § 203(d).

mechanism for providing video description and the mechanism adopted herein for making emergency information accessible. Given our understanding that most covered apparatus already make secondary audio streams available today, we do not expect the apparatus rules to impose undue hardship on equipment manufacturers.²⁰⁴

A. Apparatus Requirements for Emergency Information and Video Description

49. We codify language comparable to that found in Section 203 of the CVAA to explain what covered apparatus must do to comply with the emergency information and video description requirements. Specifically, we require all “apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size,” to “have the capability to decode and make available” the secondary audio stream, which will facilitate the following services: (1) “the transmission and delivery of video description services as required by” our video description rule; and (2) “emergency information (as that term is defined in [our emergency information rule, Section 79.2 of this Part]) in a manner that is accessible to individuals who are blind or visually impaired.”²⁰⁵ It is our understanding that most apparatus subject to the rules already comply with these requirements.²⁰⁶ In the discussion that follows, we discuss more specifically the compliance requirements for manufacturers of covered apparatus to ensure that video description services and emergency information provided via a secondary audio stream are available and accessible to individuals who are blind or visually impaired.

1. Performance and Display Standards

50. Section 203 of the CVAA directs the Commission to “provide performance and display standards for . . . the transmission and delivery of video description services, and the conveyance of emergency information”²⁰⁷ In accordance with the statutory language discussed above, our rules will require covered apparatus to decode and make available the secondary audio stream, in a manner that enables consumers to select the stream used for the transmission and delivery of emergency information and video description services.²⁰⁸ Accordingly, covered apparatus must take any steps necessary to decode the secondary audio stream used in the provision of these services. We agree with commenters that, at this time, more specific technical standards might hinder innovation in the marketplace as

²⁰⁴ See also *infra* Section IV.B.2 (discussing the technical feasibility and achievability limitations to the apparatus requirements).

²⁰⁵ 47 U.S.C. § 303(u)(1). We note that the regulatory text adopted herein includes certain minor modifications from that proposed in the *NPRM*, in an effort to better correspond to the statutory language. See *infra* Appendix B (Final Rules), § 79.105(a).

²⁰⁶ See, e.g., NCTA Comments at 11 (“customers today can receive video description provided by broadcast stations and cable networks in a second audio stream on equipment supplied by cable operators”) (citing VPAAC Second Report: Video Description at 13-14); CEA Jan. 24 *Ex Parte* Letter at 2 (“most DVD players support multiple audio streams”); DIRECTV/DISH Network Jan. 18 *Ex Parte* Letter at 1 (“Because both DIRECTV and DISH Network carry the secondary audio feed of many broadcasters across the country, they will be able to implement a regime that uses such feeds virtually seamlessly for those stations.”); Comcast Mar. 4 *Ex Parte* Letter at 1 (“We noted that Comcast today passes through the secondary audio stream for all its cable services and supports access to secondary audio in its set-top boxes.”); Comcast Mar. 15 *Ex Parte* Letter at 1 (same).

²⁰⁷ 47 U.S.C. § 330(b).

²⁰⁸ Proposals regarding accessible user interfaces are outside the scope of this proceeding; they will be covered by the forthcoming proceeding implementing Sections 204 and 205 of the CVAA. See Consumer Groups Reply at 4; Verizon Reply at 2-3; *Sections 204 and 205 Public Notice*.

manufacturers develop improved means of decoding and making available the secondary audio stream.²⁰⁹ Our record-based understanding²¹⁰ that most covered apparatus already enable customers to access the secondary audio stream, in the absence of any specific requirement, demonstrates that specific, as opposed to general, performance and display standards are not currently needed.²¹¹ As the Consumer Electronics Association (“CEA”) notes, declining to adopt specific performance and display standards here is consistent with the *ACS Order*, in which the Commission adopted general performance objectives instead of more specific criteria.²¹²

51. We do not require apparatus to contain any TTS capability at this time, although we do not prohibit manufacturers from including TTS capability in an apparatus.²¹³ In the *NPRM*, we sought comment on whether apparatus should have the capability to make textual emergency information audible through the use of TTS.²¹⁴ Commenters strongly object to imposing such a requirement on apparatus because compliance would be costly, and because requiring apparatus itself to convert a text crawl into audio through the use of TTS would change the device from having a passive role of passing through information to having an active role of creating the oral emergency message from the text version.²¹⁵

²⁰⁹ See CEA Comments at 10-11; ESA Comments at 5-6; Reply Comments of the Consumer Electronics Association at 5 (“CEA Reply”); Reply Comments of CTIA-The Wireless Association at 2 (“CTIA Reply”); CEA Jan. 24 *Ex Parte* Letter at 2; Letters from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Feb. 1, 2013) (“CEA Feb. 1 *Ex Parte* Letters”); Letters from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Feb. 8, 2013) (“CEA Feb. 8 *Ex Parte* Letters”). See also NCTA Comments at 7 (“Section 203 . . . was not meant to be another provision by which the Commission could impose new obligations – technical or otherwise – on cable operators’ provision of video description”) (footnote omitted); TIA Comments at 6, 10-11 (stating that any required “specific capabilities” should allow maximum flexibility, and proposing that the Commission adopt industry-developed technical standards as safe harbors for compliance but not specifying what those standards should include). One commenter argues that the Commission should establish basic quality standards for the provision of video description. See Pierce Comments at 5. However, the issue of quality standards for video description is outside the scope of this proceeding. In any event, the Commission “will invite comments on the quality of video description when we conduct the inquiry that will inform our first report to Congress under the CVAA.” *2011 Video Description Order*, 26 FCC Rcd at 11871, ¶ 50.

²¹⁰ See *supra* note 206.

²¹¹ See, e.g., NCTA Comments at 2, 8.

²¹² *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14647-48, ¶¶ 211-12 (2011) (“*ACS Order*”); CEA Comments at 10; CEA Reply at 5.

²¹³ In the context of the requirements adopted pursuant to Section 202 of the CVAA, we provide qualitative standards for TTS for covered entities that choose to use TTS. See *supra* Section III.B.1. We do not impose such qualitative standards on TTS contained in apparatus unless entities subject to the emergency information requirements adopted herein pursuant to Section 202 of the CVAA rely on TTS in apparatus to meet their obligations. For example, a cable operator might rely on TTS capability in the set-top box to convert emergency text into aural format. In such situations, the qualitative standards for TTS set forth in revised Section 79.2 of our rules will apply to an entity’s use of the TTS capability in the apparatus. See *infra* Appendix B (Final Rules), § 79.2(b)(2)(ii). This approach is supported by the fact that it is the entities subject to Section 79.2 of our rules who are obligated to create the aural version of the emergency information, and not the apparatus.

²¹⁴ *NPRM*, 27 FCC Rcd at 14741-42, ¶ 20.

²¹⁵ See AT&T Comments at 3-4, 9; CEA Comments at 3, 11; ESA Comments at 6-7; NCTA Comments at 9; TIA Comments at 6; CEA Reply at 6; CTIA Reply at 2, 7-8; Verizon Reply at 4. Certain of these commenters also argue that TTS may not yet be sufficiently reliable. See AT&T Comments at 4, 9; CEA Comments at 3, 11; TIA Comments at 6; CEA Reply at 5.

Based on these comments, we find that the costs of requiring apparatus manufacturers to include TTS capability would outweigh the benefits, given that other entities are already required to ensure that emergency information is converted from text format to an aural format. Although we do not, at this time, require apparatus to contain any TTS capability, we may revisit this issue in the future if circumstances evolve such that requiring TTS capability in the apparatus would be a preferable approach.

2. Recording Devices

52. Similar to our treatment of apparatus that receive or play back video programming, as discussed above, we codify language comparable to that found in Section 203 of the CVAA to explain what recording devices must do to comply with the emergency information and video description requirements. Specifically, we require all “apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States,” to enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of “video description signals, and emergency information (as that term is defined in [Section 79.2 of this Part]) such that viewers are able to activate and de-activate the . . . video description as the video programming is played back on a picture screen of any size.”²¹⁶ In the *NPRM*, the Commission asked what specifically it should require of recording devices to “enable the rendering or the pass through of” video description and emergency information.²¹⁷ In compliance with the statutory directive, we require that recording devices store the secondary audio stream along with the recorded video, such that a consumer may switch between the main program audio and the secondary audio stream when viewing recorded video programming.²¹⁸ The fact that most modern recording devices already record programming with the secondary audio stream demonstrates that this requirement is not burdensome, and that more specific standards are not currently needed.²¹⁹ ACB states that the Commission “should require manufacturers who develop devices which record video programming to record the described content along with the nondescribed stream,” and “that the manufacturers must allow the user to choose whether to record the described content via accessible means.”²²⁰ We understand ACB’s concern to be ensuring that the secondary audio stream is accessible to consumers who record video programming. Because in modern recording devices the recording of the secondary audio stream

²¹⁶ 47 U.S.C. § 303(z)(1). ACB supports recording device requirements. See ACB Comments at 3. Although the *NPRM* proposed rule language that would have required recording devices to “enable the rendering or the pass through of video description signals and emergency information,” we note that the term “rendering” is generally inapplicable to audio, and thus we substitute the term “presentation.” See *NPRM*, 27 FCC Rcd at 14755.

²¹⁷ *NPRM*, 27 FCC Rcd at 14742, ¶ 21.

²¹⁸ See Pierce Comments at 5.

²¹⁹ See CEA Comments at 11 (“CEA believes that most modern recording devices already have the ability to store both main program audio and secondary stream audio when capturing video programs, which obviates the need for specific regulations.”); NCTA Comments at 9 (“When a cable customer elects to record a particular program on an operator-supplied DVR, the DVR records both the primary and secondary audio streams embedded in that program.”); CEA Reply at 6; Verizon Reply at 4-5. We disagree, however, with arguments that the Commission need not prescribe *any* recording device requirements because of current compliance. See CEA Comments at 3, 11; CEA Reply at 6; Verizon Reply at 4-5 (“Moreover, as NCTA notes, there is no need to adopt rules for recording devices to enable rendering or pass through of video description and emergency information, as operator supplied DVRs record both the primary and secondary audio streams embedded in that program giving the customer [the] ability [to] choose to view/listen to the descriptive and emergency information.”) (footnote omitted). The CVAA directs the Commission to impose requirements on recording devices, and such requirements will ensure that devices will continue to operate as needed to comply with the statute.

²²⁰ ACB Comments at 3.

occurs automatically,²²¹ it is unnecessary to require that consumers be permitted to choose whether to record a secondary audio stream.

53. In the *NPRM*, the Commission asked how the rules relating to emergency information should apply to recording devices, given that emergency information is, by its nature, extremely time sensitive.²²² Under the rules adopted herein, all covered apparatus must make available the secondary audio stream, which is used for both video description and emergency information; thus, there would be no practical impact if we were to say that recording devices are not required to record and make available emergency information carried on a secondary audio stream. Although ACB would prefer that recording devices record video description instead of emergency information,²²³ we find that such an approach would not be possible given that the apparatus does not play any role in deciding the content of the secondary stream, which may contain emergency information that has overridden video description.²²⁴ Additionally, we find that consumers may play back recorded programming moments after it was first shown on television, and thus, emergency information may still be relevant.²²⁵ The Entertainment Software Association (“ESA”) notes potential harm of emergency information appearing during recorded programming because “a casual observer of recorded programming may be misled or confused by information that is no longer current or relevant.”²²⁶ On balance, we find that it is preferable to ensure that consumers have access to recorded emergency information that may still be relevant, rather than attempting to avoid the seemingly attenuated possibility that a casual observer may not realize that the programming is recorded and could be misled by outdated emergency information.

3. Customer Support Services

54. We do not at this time require MVPDs that provide set-top boxes and manufacturers of other covered apparatus to provide specific customer support services to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams to access video description and accessible emergency information, but we seek further comment on this issue below. Although expressly raised in the *NPRM*,²²⁷ there was little comment on this issue. As in the context of customer support services pursuant to Section 202 of the CVAA, AT&T argues that covered entities should have the flexibility to educate customers on the use of the secondary audio stream,²²⁸ and NCTA contends that additional rules in this area are unnecessary because “cable operators currently provide

²²¹ See, e.g., NCTA Comments at 9 (“When a cable customer elects to record a particular program on an operator-supplied DVR, the DVR records both the primary and secondary audio streams embedded in that program.”).

²²² *NPRM*, 27 FCC Rcd at 14742, ¶ 21.

²²³ See ACB Comments at 4.

²²⁴ See Letter from Diane B. Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 6, 2013) (“We also clarified that when a cable customer elects to record a particular broadcast program on an operator-supplied DVR, the DVR records the primary and secondary audio stream as it is transmitted by the broadcast station. Thus, if a broadcaster is transmitting emergency information in the secondary audio stream in lieu of video description, the emergency information will be recorded.”) (footnote omitted).

²²⁵ See Pierce Comments at 5; Consumer Groups Reply at 13. See also *infra* Section IV.B.3 (discussing applicability of the apparatus requirements to removable media players).

²²⁶ ESA Comments at 5, n. 14.

²²⁷ See *NPRM*, 27 FCC Rcd at 14744-45, ¶ 28.

²²⁸ See AT&T Comments at 4, 8-9 (urging a flexible approach that would permit manufacturers to determine how to educate consumers on the use of the secondary audio stream).

customer support for handling video description concerns.²²⁹ Given the lack of detailed comment on this issue, we seek further comment in the attached *Further Notice*.²³⁰ While we do not prescribe specific customer service requirements on manufacturers or MVPDs at this time, we believe that manufacturers' and MVPDs' customer service representatives should be able to answer consumer questions about accessing the secondary audio stream with respect to the devices each supports. Additionally, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact, as well as other information about how to seek assistance, on their websites and in other informational materials distributed to the public.

4. Interconnection Mechanisms

55. The CVAA directs the Commission to require that “interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary . . . to make encoded video description and emergency information audible.”²³¹ In the *NPRM*, we sought comment on our understanding that devices already use interconnection mechanisms that make available audio provided via a secondary audio stream, and that no further steps would be needed to implement this requirement.²³² NCTA, the only commenter that addresses this issue, states that no further steps are needed to implement this statutory provision because “[o]perator-supplied set-top boxes already use interconnection mechanisms that make available audio provided via the secondary audio stream.”²³³ We find that we need not require apparatus, including operator-supplied set-top boxes, to do more than that. In order to fulfill the interconnection mechanism provision of the CVAA and to provide clarity to the industry, however, we adopt a rule that states that covered apparatus must use interconnection mechanisms that make available the audio provided via the secondary audio stream. In doing so, it is our expectation, based on the record, that apparatus manufacturers will not need to take any additional steps to comply with this rule.

5. Issues from 2011 Video Description Order

56. In the *NPRM*, the Commission sought comment on three issues that arose in the 2011 video description proceeding. These issues pertain to equipment features that present challenges for video programming distributors and consumers. For the reasons discussed below, we decline to address these issues at this time, although we seek further comment on the first issue in the *Further Notice*.

57. First, the *NPRM* sought comment on whether the Commission should impose a requirement that broadcast receivers detect and decode tracks marked for the “visually impaired.”²³⁴ The issue arose in the *2011 Video Description Order*, when the Commission observed that viewers with digital television sets, as well as other viewers, may be unable to find and activate an audio stream tagged as “visually impaired” (“VI”), which is the tag used for video description as dictated by the digital television standard, which is known as the ATSC standard.²³⁵ The Commission also cited comments

²²⁹ NCTA Jan. 18 *Ex Parte* Letter at 2; NCTA Feb. 28 *Ex Parte* Letter at 2; NCTA Mar. 11 *Ex Parte* Letter at 2. See also NCTA Comments at 14. AFB supports customer service requirements for covered entities, but it does not explain whether this would pertain to entities covered by Section 203 of the CVAA as well as those covered by Section 202. See AFB Comments at 3.

²³⁰ See *infra* Section V.

²³¹ 47 U.S.C. § 303(z)(2).

²³² *NPRM*, 27 FCC Rcd at 14742, ¶ 23.

²³³ NCTA Comments at 10.

²³⁴ *NPRM*, 27 FCC Rcd at 14742-43, ¶ 24.

²³⁵ See *2011 Video Description Order*, 26 FCC Rcd at 11863, ¶ 30. A tag, in this context, refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.

indicating that many legacy televisions may be compatible only with audio streams tagged as “complete main” (“CM”).²³⁶ Further, it has been reported that some television receivers do not properly handle two audio tracks if they are both identified as “English,” and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description. As a result of the tagging issues described above, consumers may find it difficult to identify and select audio streams containing video description. In the 2011 video description proceeding, the Commission decided that this issue would be better addressed in a later proceeding.²³⁷ CEA and NAB argue that we should not address the issue of tagging and decoding of secondary audio streams in this proceeding, particularly given the statutory deadlines imposed by the CVAA.²³⁸ We recognize that this is an important issue, but we also recognize that we currently lack a detailed record on these very technical matters. Accordingly, we seek comment on this issue in the *Further Notice* below.²³⁹ In the interim we expect local broadcasters to coordinate with manufacturers to ensure that consumers can easily access video description and emergency information provided on a secondary audio stream,²⁴⁰ and we expect voluntary standards setting bodies to explore how best to impose a consistent tagging scheme.

58. Second, the *NPRM* sought input on the comment of Dolby Laboratories, Inc. in the 2011 video description proceeding that the audio experience for individuals accessing video-described programming could be enhanced if devices supported a “receiver-mix” technology that would enable the device to combine the full surround sound main audio with video description.²⁴¹ Commenters specifically object to the “receiver-mix” proposal, claiming that it is inconsistent with the current digital television standard and has been considered and rejected by the industry.²⁴² Further, CEA and NAB explain that we should not address the “receiver-mix” issue in this proceeding, particularly given the statutory deadlines imposed by the CVAA.²⁴³ We agree, and thus we do not address this issue here.

59. Third, the *NPRM* asked if and how the Commission should address equipment limitations that may discourage video programming distributors from providing more than one additional audio channel.²⁴⁴ In the *2011 Video Description Order*, the Commission noted that such limitations may

²³⁶ *2011 Video Description Order*, 26 FCC Rcd at 11863, n. 131.

²³⁷ *Id.* at 11863, ¶ 31 and n. 133.

²³⁸ CEA Comments at 4, 14; NAB Comments at 17; CEA Reply at 7; CEA Jan. 24 *Ex Parte* Letter at 2; CEA Feb. 1 *Ex Parte* Letters at 2; CEA Feb. 8 *Ex Parte* Letters at 2.

²³⁹ *See infra* Section V.

²⁴⁰ *See* NCTA Comments at 12; NAB Reply at 9.

²⁴¹ *See 2011 Video Description Order*, 26 FCC Rcd at 11872, n. 208; Comments of Dolby Laboratories, Inc., MB Docket No. 11-43, at 3 (filed Apr. 28, 2011); *NPRM*, 27 FCC Rcd at 14743, ¶ 25.

²⁴² *See* CEA Comments at 15 (“The specifications for mixing the narrative audio track with the regular audio track in the receiver were removed in the 2010 revision of the ATSC Digital TV Standard, A/53, and consequently the standard no longer specifies the capability of providing a receiver-mix.”); NAB Comments at 18, n. 50 (“Further, as the Commission noted in the *2011 Video Description Order*, the Commission’s rules prohibit it from preemptively incorporating changes to a third party standard, which would appear to be required to adopt Dolby’s ‘receiver-mix’ proposal.”); Verizon Reply at 7 (“The concept of mixing the narrative audio track with the regular audio track in the receiver has been considered and rejected by the industry.”).

²⁴³ CEA Comments at 4, 14; NAB Comments at 17-18; CEA Reply at 7; CEA Jan. 24 *Ex Parte* Letter at 2; CEA Feb. 1 *Ex Parte* Letters at 2; CEA Feb. 8 *Ex Parte* Letters at 2. Some commenters also discuss the issue of making surround sound available on the secondary audio stream. One commenter supports such a requirement. *See* Pierce Comments at 5. Others explain that capacity constraints would lead to difficulty in providing two full surround sound audio streams. *See* DIRECTV Comments at 8, n. 27; NAB Comments at 18.

²⁴⁴ *NPRM*, 27 FCC Rcd at 14743-44, ¶ 26.

prevent some viewers from accessing a third audio channel, even if a video programming distributor provides such a channel.²⁴⁵ CEA and NAB explain that we should not address these equipment limitations in this proceeding, particularly given the statutory deadlines imposed by the CVAA.²⁴⁶ We agree that we should not at this time address equipment limitations that may prevent consumers from accessing a third audio channel. In the *NPRM*, the Commission asked specifically whether it should address this problem by mandating compliance with what is known as “CEA-CEB21,” *Recommended Practice for Selection and Presentation of DTV Audio*, a bulletin that “provides recommendations to manufacturers to facilitate user setup of audio features in the receiver without professional assistance.”²⁴⁷ CEA explains that CEA-CEB21 is a recommended practice with no normative requirements, and that it is not designed for use as a rule for which compliance is enforced.²⁴⁸ Accordingly, we do not impose CEA-CEB21 as a required compliance standard. We expect the industry to continue its work to develop products that are capable of delivering multiple ancillary audio streams.

B. Apparatus Subject to Section 203 of the CVAA

1. General Scope of the Apparatus Requirements

60. The rules adopted in this proceeding pursuant to Section 203 of the CVAA apply only to apparatus designed to receive, play back, or record video programming provided by the entities subject to our existing emergency information rules (as set forth in Section 79.2) and our existing video description rules (as set forth in Section 79.3).²⁴⁹ In the *NPRM*, the Commission proposed to apply the video description and emergency information requirements adopted pursuant to Section 203 of the CVAA only to apparatus designed to receive, play back, or record “television broadcast services or MVPD services.”²⁵⁰ Several commenters support the proposal to limit the apparatus requirements adopted herein to apparatus designed to receive, play back, or record television broadcast services or MVPD services.²⁵¹

²⁴⁵ 2011 Video Description Order, 26 FCC Rcd at 11864, ¶ 32.

²⁴⁶ CEA Comments at 4, 14; NAB Comments at 17-18; CEA Reply at 7; CEA Jan. 24 *Ex Parte* Letter at 2; CEA Feb. 1 *Ex Parte* Letters at 2; CEA Feb. 8 *Ex Parte* Letters at 2. Other commenters also object to Commission-mandated technical standards with respect to the provision of multiple audio services. See ESA Comments at 6 and n. 17; NCTA Comments at 12-13 (explaining that the cable system architecture today only supports two channels, and providing an additional stream would be “a significant and costly undertaking”); Verizon Reply at 7 (agreeing with NCTA that providing multiple simultaneous ancillary audio services would be a costly undertaking).

²⁴⁷ CEA-CEB21, *Recommended Practice for Selection and Presentation of DTV Audio*, June 2011, available at <http://www.ce.org/Standards/Standard-Listings/R4-3-Television-Data-Systems-Subcommittee/CEA-CEB21.aspx>.

²⁴⁸ CEA Comments at 15.

²⁴⁹ See 47 C.F.R. §§ 79.2, 79.3. Both rules apply to television broadcast stations, MVPDs, 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.” See *id.* §§ 79.1(a)(2), 79.2(a)(1), 79.3(a)(5). Although Sections 79.2 and 79.3 impose requirements on covered *entities*, we find it more useful in some instances to discuss the scope of the rules in terms of the *video programming* provided by covered entities, as it is such programming that must be provided aurally. See also *supra* Section III.A. We clarify that at this time, the apparatus requirements adopted herein are not triggered by an apparatus receiving, playing back, or recording video programming available for viewing on an Internet website, even if such programming is provided by a covered entity. We also clarify that at this time, the apparatus requirements adopted herein do not apply to mobile devices that do not include receivers used to access television broadcast or MVPD services. The *Further Notice* poses additional questions about applicability of the requirements adopted herein to mobile devices. See *infra* Section V. As explained *infra* paragraph 74, the apparatus requirements adopted herein apply to mobile DTV apparatus.

²⁵⁰ See *NPRM*, 27 FCC Rcd at 14745-46, ¶ 30.

²⁵¹ See CEA Comments at 4; ESA Comments at 1; NCTA Comments at 15; TIA Comments at 2, 7; CEA Reply at 3-4; CTIA Reply at 2-3, 5; Verizon Reply at 5.

Consumer Groups, however, point out that the CVAA directs the Commission to impose emergency information requirements on video programming providers and distributors as defined in Section 79.1 of its rules, which includes more than just broadcasters and MVPDs.²⁵² Upon further consideration, we find no basis to deviate from our existing definition, and we agree with the Consumer Groups that we should not exclude from coverage video programming provided by the third category of video programming distributors, which is “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.”²⁵³ We thus conclude that it is more appropriate to extend the rules adopted in this proceeding pursuant to Section 203 of the CVAA to apparatus designed to receive, play back, or record video programming provided by broadcasters, MVPDs, 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.”

61. We disagree with Consumer Groups’ contention that the apparatus rules should apply as broadly here as they did in the IP closed captioning proceeding.²⁵⁴ We note that the CVAA does not define the term “apparatus.” Thus, we must give meaning to the term in a manner that best effectuates the intent of Congress and the purposes of the statute. We recognize that the CVAA’s legislative history indicated Congress’ intent to “ensure[] that devices consumers use to view video programming are able to . . . decode, and make available the transmission of video description services, and decode and make available emergency information.”²⁵⁵ However, given the current scope of Sections 79.2 and 79.3 of our rules,²⁵⁶ we decline at this time to adopt rules to encompass apparatus that are not designed to receive, play back, or record video programming provided by entities subject to our existing emergency information and video description rules. Such a limitation is reasonable because it ensures that consumers are able to use apparatus to access a secondary audio stream that relays programming that includes

²⁵² See Consumer Groups Reply at 5-6 (explaining that the definition of “video programming distributor” includes television broadcast stations, MVPDs, 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,” and that the definition of “video programming provider” includes video programming distributors as well as “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”); Consumer Groups Feb. 27 *Ex Parte* Letter at 2; Consumer Groups Mar. 4 *Ex Parte* Letter at 2; Consumer Groups Mar. 7 *Ex Parte* Letter at 2; Consumer Groups Mar. 11 *Ex Parte* Letter at 2; 47 C.F.R. §§ 79.1(a)(2)-(3).

²⁵³ See 47 C.F.R. §§ 79.1(a)(2), 79.3(a)(5).

²⁵⁴ See Consumer Groups Reply at 8, 10. See also Consumer Groups Feb. 27 *Ex Parte* Letter at 2; Consumer Groups Mar. 4 *Ex Parte* Letter at 2; Consumer Groups Mar. 7 *Ex Parte* Letter at 2; Consumer Groups Mar. 11 *Ex Parte* Letter at 2. We find unpersuasive Consumer Groups’ claim that “the fact that programming is not required to be made accessible under Section 202 or other law does not excuse apparatus manufacturers from their obligations to render accessibility information pursuant to Section 203(a).” See Consumer Groups Reply at 11. Consumer Groups cite specifically to the Commission’s decision in the *IP Closed Captioning Order* to extend the apparatus requirements to DVD players, even though the DVDs themselves may not be required to include captions. See *id.* See also *IP Closed Captioning Order*, 27 FCC Rcd at 845-46, ¶ 99. In the *IP Closed Captioning Order*, the Commission explained that the CVAA explicitly required coverage of apparatus that play back, but do not receive, video programming transmitted simultaneously with sound, such as DVD players. See *id.*

²⁵⁵ Senate Committee Report at 14; House Committee Report at 30.

²⁵⁶ See 47 C.F.R. §§ 79.2(a)(1) (applying the definitions of 47 C.F.R. §§ 79.1 and 79.3 to the emergency information rules); 79.1(a)(2) (defining “video programming distributor” to include “[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”); 79.3(a)(5) (defining “video programming distributor” to include the same categories).

emergency information and video description yet, at the same time, ensures that we avoid placing undue and unnecessary burdens on industry. Accordingly, the apparatus requirements adopted herein are triggered only when the apparatus is designed to receive, play back, or record video programming that is subject to Sections 79.2 and 79.3 of our rules, *i.e.*, video programming provided by entities subject to those rules.²⁵⁷

62. We interpret the term “apparatus” to include the physical devices designed to receive, play back, or record video programming transmitted simultaneously with sound, as well as software integrated in those covered devices.²⁵⁸ The *NPRM* proposed to define apparatus subject to the emergency information and video description requirements to include “the physical device and the video players that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players that manufacturers direct consumers to install after sale.”²⁵⁹ As in its petition for reconsideration of the *IP Closed Captioning Order*,²⁶⁰ CEA argues that we should use the term “video programming player” in lieu of the term “video player” because the inclusion of “video players” in the definition of “apparatus” exceeds the scope of Section 203 of the CVAA by failing to limit its scope to video players designed to receive or play back “video programming,” as that term is defined in the CVAA.²⁶¹ We find that, substituting the term “video programming player” for “video player,” as CEA requests, would not appear to provide any further clarity, as we are not aware of any commonly accepted definition of “video programming player.”²⁶² Nonetheless, to address CEA’s argument that our rules should not reach apparatus that only display video that does not constitute “video programming,” and to make the language of the rules more consistent with the statute, we revise the proposal in the *NPRM* by replacing references to “video players” with “video player(s) capable of displaying video programming transmitted simultaneously with sound.”²⁶³ We

²⁵⁷ The Wireless RERC requests that the Commission investigate, via Public Notice or Notice of Inquiry, the technical feasibility of providing aural and visual emergency information on live IP-delivered video programming, including methods for identifying whether the viewing apparatus is within the geographic location of the emergency situation. Wireless RERC Comments at 13-14. CTIA-The Wireless Association (“CTIA”) responds that the Wireless RERC’s proposal that the Commission investigate and require the inclusion of emergency information in live, IP-delivered video programming is beyond the scope of the CVAA. CTIA Reply at 7.

²⁵⁸ See *NPRM*, 27 FCC Rcd at 14746, ¶ 31; *IP Closed Captioning Order*, 27 FCC Rcd at 839-40, ¶ 93. As explained above, in this context, unlike the closed captioning context, we limit the scope of the apparatus requirements to apparatus designed to receive, play back, or record video programming provided by entities subject to Sections 79.2 and 79.3 of our rules.

²⁵⁹ *NPRM*, 27 FCC Rcd at 14754-55.

²⁶⁰ Petition for Reconsideration of the Consumer Electronics Association, MB Docket No. 11-154, at 3-8 (filed Apr. 30, 2012) (“CEA Recon. Petition”).

²⁶¹ CEA Comments at 6-8; CEA Reply at 5. The CVAA defines “video programming” as “programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media.” 47 U.S.C. § 613(h)(2).

²⁶² We note that in another proceeding, CEA has proposed that we define “video programming player” as “a component, application, or system that is specifically intended by the manufacturer to enable access to video programming, not video in general.” See CEA Recon. Petition at 8. See also CEA Comments at 8; CEA Reply at 4-5; Reply Comments of the Telecommunications Industry Association at 2-3 (“TIA Reply”) (supporting CEA’s proposal). The definition relies upon a consideration of the manufacturers’ intent, which we find to be inappropriate here, as discussed below, since it would allow a manufacturer unilaterally to decide whether an apparatus falls within the scope of the rules. See *infra* Section IV.B.2.

²⁶³ As in the *IP Closed Captioning Order*, the apparatus rules adopted herein cover manufacturer-provided updates and upgrades to devices; thus, a device that originally did not include a video player capable of displaying video (continued....)

believe that by limiting the scope of our rules to video players that are capable of displaying “video programming transmitted simultaneously with sound,” we will address CEA’s fundamental concern that our definition of “apparatus” should be consistent with the CVAA.²⁶⁴

2. Interpretation of Statutory Terms Incorporated in the Commission’s Apparatus Requirements

63. Below we interpret certain statutory terms incorporated in the Commission’s apparatus requirements. Each of these interpretations is adopted as proposed in the *NPRM*, and each is consistent with the approach taken in the *IP Closed Captioning Order*.²⁶⁵

64. *Designed to Receive, Play Back, or Record Video Programming.* Under the CVAA, the emergency information and video description requirements apply to “apparatus designed to receive or play back video programming transmitted simultaneously with sound,” and to “apparatus designed to record video programming transmitted simultaneously with sound.”²⁶⁶ In the *NPRM*, we proposed to consider an apparatus to be “designed to” receive, play back, or record video programming transmitted simultaneously with sound if it is sold with, or updated by the manufacturer to add, an integrated video player capable of displaying video programming.²⁶⁷ We adopt our proposed definition of “designed to.” In determining whether a device falls within this definition, we will look to the functionality of the device (*i.e.*, whether it is capable of receiving or playing back video programming), rather than the subjective intent of the manufacturer (*i.e.*, the manufacturer’s intent when it designed the apparatus), to determine if the device is designed to receive, play back, or record video programming.²⁶⁸ CEA argues here, as in its petition for reconsideration of the *IP Closed Captioning Order*, that the Commission instead should consider the manufacturer’s intent in determining what an apparatus was “designed to” accomplish.²⁶⁹ We disagree, because such an approach would allow the manufacturer unilaterally to dictate whether an apparatus falls within the scope of the rules, which could harm consumers by making compliance with the apparatus emergency information and video description requirements effectively voluntary.²⁷⁰ As the Commission stated in the *IP Closed Captioning Order*, we are persuaded that adopting a bright-line standard based on the device’s capability will provide more certainty for manufacturers.²⁷¹

(Continued from previous page)

programming transmitted simultaneously with sound, but that the manufacturer requires the consumer to update or upgrade to enable video reception or play-back, will be covered by our rules, and our rules equally cover updates or upgrades to existing video players. *See IP Closed Captioning Order*, 27 FCC Rcd at 842, n. 376. We would not, however, hold manufacturers liable for failure to comply with the apparatus requirements adopted herein for devices manipulated or modified by consumers in the aftermarket. *See id.*

²⁶⁴ *See* CEA Comments at 6-7; CEA Reply at 4-5; 47 U.S.C. §§ 303(u)(1), (z)(1).

²⁶⁵ Consumer Groups encourage the Commission to adopt apparatus rules consistent with those adopted in the *IP Closed Captioning Order*. Consumer Groups Jan. 22 *Ex Parte* Letter at 3.

²⁶⁶ 47 U.S.C. §§ 303(u)(1), (z)(1).

²⁶⁷ *See NPRM*, 27 FCC Rcd at 14746, ¶ 32; *IP Closed Captioning Order*, 27 FCC Rcd at 842, ¶ 95 (“Our decision to cover ‘integrated video players’ is consistent with the statutory language of Section 203 of the CVAA which covers those apparatus ‘designed to receive or play back video programming transmitted simultaneously with sound.’”) (footnote omitted). A “video player” is the means by which an apparatus actually displays video.

²⁶⁸ *See IP Closed Captioning Order*, 27 FCC Rcd at 842, ¶ 95.

²⁶⁹ CEA Comments at 7; CEA Recon. Petition at 5-8. *See also* TIA Reply at 2.

²⁷⁰ Consumer Groups agree that we should not consider the manufacturer’s intent in determining what an apparatus was “designed to” accomplish. *See* Consumer Groups Reply at 16-17; Consumer Groups Feb. 15 *Ex Parte* Letter at 3.

²⁷¹ *NPRM*, 27 FCC Rcd at 842, ¶ 95.

65. *Uses a picture screen of any size.* Section 203 of the CVAA applies to apparatus designed to receive or play back video programming “if such apparatus . . . uses a picture screen of any size.”²⁷² In the *NPRM*, we proposed interpreting this phrase to mean that the apparatus works in conjunction with a picture screen, which is the approach that the Commission adopted in the IP closed captioning proceeding.²⁷³ Commenters did not discuss this issue, and we see no reason to deviate from the well-reasoned approach adopted in the *IP Closed Captioning Order* regarding the same statutory provision. We consider an apparatus to *use* a picture screen of any size if the apparatus works in conjunction with a picture screen.²⁷⁴ Thus, apparatus that “use[] a picture screen of any size” include not only devices that have a built-in screen, but also devices that are designed to work in conjunction with a screen, such as set-top boxes, game consoles, personal computers, and other receiving or play back devices separated from a screen.²⁷⁵

66. *Technically feasible.* The requirements of Section 203 of the CVAA pertaining to apparatus designed to receive or play back video programming apply only to the extent they are “technically feasible.”²⁷⁶ In the *NPRM*, we proposed to consider compliance with the apparatus requirements to be technically infeasible if a manufacturer shows that changes to the design of the apparatus to incorporate the required capabilities are not physically or technically possible.²⁷⁷ We further proposed that it would not be sufficient to show that compliance is merely difficult.²⁷⁸ These proposals mirrored the approach adopted in the IP closed captioning context. As explained in that context, because neither the statute nor the legislative history provides guidance as to the meaning of “technical feasibility,” the Commission is obligated to interpret the term to best effectuate the purpose of the statute.²⁷⁹ In the *IP Closed Captioning Order*, the Commission looked to prior Commission interpretations of the phrase “technically feasible” and other similar terms in the context of accessibility for people with disabilities, which similarly relied on whether incorporation of the capability was physically and technically possible.²⁸⁰ Commenters did not discuss this issue, and we see no reason to deviate from the reasoned approach adopted in the *IP Closed Captioning Order* to the same statutory provision. Accordingly, we adopt the proposed interpretation of the meaning of “technically feasible.” Given our understanding that most covered apparatus already make secondary audio streams available today, we expect that covered apparatus will only rarely be able to demonstrate that it would be physically or technically impossible to change the design of the apparatus to incorporate the required capabilities. Consistent with the *IP Closed Captioning Order*, we permit parties to raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or

²⁷² See 47 U.S.C. § 303(u)(1).

²⁷³ *NPRM*, 27 FCC Rcd at 14746-47, ¶¶ 32-33; *IP Closed Captioning Order*, 27 FCC Rcd at 842-43, ¶ 96.

²⁷⁴ See *NPRM*, 27 FCC Rcd at 14746, ¶ 32; *IP Closed Captioning Order*, 27 FCC Rcd at 842, ¶ 96 (“reject[ing] the argument that Section 203 applies only to devices that include screens, as neither the statute nor the legislative history compels such a narrow construction”) (footnote omitted).

²⁷⁵ See *NPRM*, 27 FCC Rcd at 14746, ¶ 32; *IP Closed Captioning Order*, 27 FCC Rcd at 842-43, ¶ 96.

²⁷⁶ 47 U.S.C. § 303(u).

²⁷⁷ *NPRM*, 27 FCC Rcd at 14746-47, ¶¶ 32-33.

²⁷⁸ See *id.* at 14746, ¶ 32; *IP Closed Captioning Order*, 27 FCC Rcd at 844, ¶ 98.

²⁷⁹ *IP Closed Captioning Order*, 27 FCC Rcd at 843-45, ¶¶ 97-98.

²⁸⁰ *Id.* at 843, ¶ 97.

to file a request for a ruling under Section 1.41 of the Commission's rules as to technical infeasibility *before* manufacturing or importing the product.²⁸¹

67. *Achievability.* Section 203 provides that apparatus “that use a picture screen that is less than 13 inches in size” must meet the requirements of that section only if “achievable,” as that word is defined in Section 716 of the Communications Act.²⁸² Section 203 also provides that “apparatus designed to record video programming transmitted simultaneously with sound” are only required to comply with the emergency information and video description requirements “if achievable (as defined in section 716).”²⁸³ Section 716 of the Communications Act defines “achievable” as “with reasonable effort or expense, as determined by the Commission,” and it directs the Commission to consider the following factors in determining whether the requirements of a provision are achievable: “(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question. (2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies. (3) The type of operations of the manufacturer or provider. (4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.”²⁸⁴

68. In the *NPRM*, we proposed a flexible approach to achievability, consistent with that adopted in the *IP Closed Captioning Order* and in the *ACS Order*, pursuant to which a manufacturer may raise achievability as a defense to a complaint alleging a violation of Section 203, or it may seek a determination of achievability from the Commission *before* manufacturing or importing the apparatus.²⁸⁵ We also proposed to model the scope of the achievability exception on the *IP Closed Captioning Order*.²⁸⁶ The only commenter that provides a substantive discussion of achievability urges the Commission to provide manufacturers maximum flexibility in meeting the requirements of the CVAA, and to consider only the four statutory factors in making a determination of achievability.²⁸⁷ As in the *IP Closed Captioning Order* and the *ACS Order*, we find that it is appropriate to weigh each of the four statutory factors equally, and that achievability should be evaluated on a case-by-case basis.²⁸⁸ When faced with a complaint for a violation of the requirements adopted herein pursuant to Section 203 of the

²⁸¹ See *NPRM*, 27 FCC Rcd at 14747, ¶ 33 and n. 120; *IP Closed Captioning Order*, 27 FCC Rcd at 845, ¶ 98. See also 47 C.F.R. § 1.41 (permitting parties to file informal requests for Commission action, based on a clear and concise showing of the facts relied on and relief sought, among other requirements).

²⁸² 47 U.S.C. § 303(u)(2)(A) (stating that “apparatus described in [Section 303(u)(1)] that use a picture screen that is less than 13 inches in size [must] meet the requirements of [these regulations] only if the requirements of such subparagraphs are achievable (as defined in section 716)”).

²⁸³ *Id.* § 303(z)(1) (requiring that “if achievable (as defined in section 716), apparatus designed to record video programming transmitted simultaneously with sound, . . . enable the rendering or the pass through of . . . video description signals, and emergency information . . .”). As in the *IP Closed Captioning Order*, here “we expect identifying apparatus designed to record to be straightforward,” and “when devices such as DVD, Blu-ray, and other removable media recording devices are capable of recording video programming, they also qualify as recording devices under Section 203(b) and therefore” are subject to the requirements that the CVAA imposes on recording devices. *IP Closed Captioning Order*, 27 FCC Rcd at 854, ¶ 114.

²⁸⁴ 47 U.S.C. § 617(g).

²⁸⁵ *NPRM*, 27 FCC Rcd at 14748, ¶ 36.

²⁸⁶ *Id.*

²⁸⁷ TIA Comments at 5.

²⁸⁸ *IP Closed Captioning Order*, 27 FCC Rcd at 848, ¶ 105; *ACS Order*, 26 FCC Rcd at 14608, ¶¶ 122-23.

CVAA, a manufacturer may raise as a defense that a particular apparatus does not comply with the rules because compliance was not achievable under the statutory factors. Alternatively, a manufacturer may seek a determination from the Commission that compliance with all of our rules is not achievable *before* manufacturing or importing the apparatus.²⁸⁹ In evaluating evidence offered to prove that compliance is not achievable, we will be informed by the analysis in the *ACS Order*, in which the Commission provided a detailed explanation of each of the four statutory factors.²⁹⁰ We remind parties that the achievability limitation is applicable only with regard to apparatus using screens less than 13 inches in size and to recording devices.

69. *Purpose-Based Waivers.* As we proposed in the *NPRM*, we will address on a case-by-case basis any requests for waivers of the requirements adopted herein for apparatus designed to receive or play back video programming.²⁹¹ Section 203 of the CVAA permits the Commission to waive the Section 203 requirements for any apparatus or class of apparatus that is “primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound,” or “for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.”²⁹² The CVAA does not define “primarily designed,” nor does it define “essential utility” except to state that it may be derived from more than one purpose.²⁹³ According to the legislative history of the CVAA, a waiver pursuant to the “primarily designed” provision is available “where, for instance, a consumer typically purchases a product for a primary purpose other than viewing video programming, and access to such programming is provided on an incidental basis.”²⁹⁴ We received little comment on purpose-based waivers. We will address any requests for waiver of the apparatus requirements adopted herein on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device.²⁹⁵ We expect that over time, Commission precedent in this area will prove instructive to both manufacturers and consumers. As in the *ACS Order*,²⁹⁶ our evaluation of requests for a purpose-based waiver also will involve consideration of the Commission’s general waiver standard, which requires good cause and a showing that particular facts make compliance inconsistent with the public interest.²⁹⁷ We find that this approach is particularly appropriate here, where waiver requests may impact accessibility and in particular accessibility of emergency information. Although we do not intend to prejudge any waiver requests that we might receive, we will consider the strong public interest in

²⁸⁹ See *NPRM*, 27 FCC Rcd at 14747-49, ¶¶ 35-36; *IP Closed Captioning Order*, 27 FCC Rcd at 848-49, ¶ 105. See also 47 C.F.R. § 1.41 (permitting parties to file informal requests for Commission action, based on a clear and concise showing of the facts relied on and relief sought, among other requirements).

²⁹⁰ See *ACS Order*, 26 FCC Rcd at 14607-19, ¶¶ 119-48. See also *IP Closed Captioning Order*, 27 FCC Rcd at 849, ¶ 105.

²⁹¹ See *NPRM*, 27 FCC Rcd at 14748-49, ¶¶ 35-36; *IP Closed Captioning Order*, 27 FCC Rcd at 849, ¶ 106.

²⁹² 47 U.S.C. § 303(u)(2)(C).

²⁹³ See *id.*

²⁹⁴ House Committee Report at 30; Senate Committee Report at 14. See also *IP Closed Captioning Order*, 27 FCC Rcd at 849, ¶ 106.

²⁹⁵ See 47 C.F.R. § 1.41. See also TIA Comments at 3, 9-10 (explaining that the availability of prospective categorical waivers would provide certainty and encourage innovation).

²⁹⁶ *ACS Order*, 26 FCC Rcd at 14637, ¶ 188.

²⁹⁷ See *NPRM*, 27 FCC Rcd at 14749, n. 133 (citing 47 C.F.R. § 1.3). See also AFB Comments at 2.

accessible emergency information when evaluating a manufacturer's request for waiver of compliance with the requirements adopted in this proceeding.²⁹⁸

3. Application of the Apparatus Requirements to Certain Categories of Apparatus

70. Below we explain the application of the apparatus requirements adopted herein to certain categories of apparatus. Application of the requirements to each category of apparatus is adopted as proposed in the *NPRM*, and each is consistent with the approach taken in the *IP Closed Captioning Order*.

71. *Removable media players.* We adopt our proposal in the *NPRM* not to exclude removable media play back apparatus, such as DVD and Blu-ray players, from the scope of the new requirements.²⁹⁹ Consumer Groups support the coverage of removable media play back apparatus, which they maintain would be consistent with the CVAA and the *IP Closed Captioning Order*.³⁰⁰ Based on the record, we believe that imposing emergency information and video description requirements on removable media players will require only minimal, if any, action on the part of manufacturers, because most removable media players, such as DVD and Blu-ray players, already support the secondary audio stream that the rules adopted herein require them to support.³⁰¹ Additionally, the apparatus rules adopted herein focus on the availability of the secondary audio stream, and the apparatus itself is agnostic as to the content of that stream. That is, an apparatus will carry the stream regardless of whether that stream contains video description, emergency information, or something else. CEA argues that we should interpret the CVAA not to apply to removable media players the apparatus rules adopted herein.³⁰² Specifically, CEA asserts that the CVAA applies to apparatus designed to receive, play back, or record video programming “transmitted simultaneously with sound,” and that the term “transmitted” describes “how a signal is conveyed or sent over a *distance* via wire or radio between two different devices or parties,” which would exclude from coverage removable media players.³⁰³ We disagree with CEA's interpretation of the term “transmitted.” Instead we reaffirm our interpretation in the *IP Closed Captioning Order* that the term “apparatus” covers devices that receive, play back, or record video

²⁹⁸ See AFB Comments at 2-3. We note that one consumer commenter objects to any waivers based on primary purpose or essential utility. Reply Comments of Faith Young at 1. We reject this argument because these waivers are statutorily-based.

²⁹⁹ See *NPRM*, 27 FCC Rcd at 14747, ¶ 34 and n. 121; *IP Closed Captioning Order*, 27 FCC Rcd at 845-46, ¶ 99.

³⁰⁰ Consumer Groups Reply at 14-15; Consumer Groups Feb. 15 *Ex Parte* Letter at 3; Consumer Groups Feb. 27 *Ex Parte* Letter at 4; Consumer Groups Mar. 4 *Ex Parte* Letter at 4; Consumer Groups Mar. 7 *Ex Parte* Letter at 4; Consumer Groups Mar. 11 *Ex Parte* Letter at 4.

³⁰¹ See CEA Jan. 24 *Ex Parte* Letter at 2 (“[M]ost DVD players support multiple audio streams. A user with visual impairment has at least two options on every DVD player for discs based on the DVD Forum A/V formats—cycling through the available audio tracks, or going to the DVD's setup menu provided by the DVD author and selecting the audio track for those with visual impairments on that menu.”); Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 15, 2013) (“CEA Mar. 15 *Ex Parte* Letter”); Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 21, 2013).

³⁰² CEA argues similarly in its petition for reconsideration of the *IP Closed Captioning Order* that the Commission should not apply the closed captioning apparatus requirements to removable media players. CEA Recon. Petition at 8-18 (arguing that the Commission should not treat “removable media players” as apparatus covered by the closed captioning rules because doing so would exceed the scope of the CVAA). The CEA Recon. Petition is pending Commission action.

³⁰³ CEA Comments at 9 (emphasis in original). See also Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 5-6 (Feb. 26, 2013).

programming “transmitted simultaneously with sound,” where “transmitted” describes how the video programming is conveyed from the device (e.g., DVD player) to the end user (simultaneously with sound).³⁰⁴ We further note that, although the CVAA and the Commission’s rules do not require removable media itself to contain emergency information and video description,³⁰⁵ the fact that an increasing number of DVDs contain video description further demonstrates the merit in requiring removable media players to facilitate the secondary audio stream on which the video description is provided.³⁰⁶

72. *Professional and commercial equipment.* We adopt our proposal to exclude commercial video equipment, including professional movie theater projectors and similar types of professional equipment, from the Section 203 rules adopted herein.³⁰⁷ Notably, no commenter objects to this proposal. Congress intended the Commission’s regulations to cover apparatus that are used by consumers.³⁰⁸ Because a typical consumer would not view video programming via professional or commercial equipment, such equipment is beyond the scope of Section 203’s accessibility requirements discussed herein. We note, however, that other federal laws may impose accessibility obligations to ensure that

³⁰⁴ *IP Closed Captioning Order*, 27 FCC Rcd at 845-46, ¶ 99. *But see* CEA Comments at 8-9. As the Commission explained in the *IP Closed Captioning Order*, “The phrase ‘or play back’ in Section 203 makes clear that Congress no longer intended to only cover devices that receive programming. Section 203 expands the prior statutory mandate to include not only apparatus that ‘receive’ programming, but also apparatus designed to ‘play back’ programming, whether or not such apparatus is also capable of receiving the programming We think the better interpretation of the word ‘transmitted’ in this context is that Congress’s substitution of the words ‘television pictures broadcast . . .’ with the corresponding words ‘video programming transmitted . . .,’ while retaining the phrase ‘simultaneously with sound,’ was intended to expand the scope of the statute beyond devices that receive broadcast television without narrowing the statute’s prior coverage.” *IP Closed Captioning Order*, 27 FCC Rcd at 845, ¶ 99.

³⁰⁵ When multimedia, including video programming, is used for the provision of services covered by other disability law, such as educational services, the covered entity must ensure that those services are accessible. *See generally* 42 U.S.C. §§ 12181-12189 (Title III of the ADA). *See also* <http://www.dcmp.org> (under a grant from the U.S. Department of Education, the Described and Captioned Media Program describes and captions multimedia for use by K-12 students).

³⁰⁶ *See, e.g.*, Media Access Group at WGBH, <http://main.wgbh.org/wgbh/pages/mag/dvsondvd.html> (last visited Feb. 8, 2013). *But see* CEA Comments at 8. We note that the *NPRM* sought comment on whether we should require only video description, and not emergency information, to be accessible via removable media players. *NPRM*, 27 FCC Rcd at 14747, ¶ 34. We find that it is unnecessary for us to distinguish between video description and emergency information requirements with respect to the secondary audio capabilities of apparatus, including removable media players, because it makes no difference to the apparatus capabilities whether the stream contains emergency information or video description. Further, not all emergency information needs to be viewed immediately to be of any use, for example, emergency information about a severe storm may include information about shelter locations that may remain relevant for a number of days. *See also supra* Section IV.A.2 (discussing application of the apparatus requirements to recording devices). *But see* CEA Comments at 8, 9 n. 28 (arguing that emergency information will not be relevant when consumers play back video programming on removable media players); TIA Comments at 7 (noting potential harm from outdated emergency information). We find that the consumer will know that he or she is watching programming on a removable media player after its initial airing, and should be able to make a determination as to whether any steps are needed in response to recorded emergency information, thus mitigating any harm resulting from the provision of emergency information via removable media players.

³⁰⁷ *See NPRM*, 27 FCC Rcd at 14747, ¶ 34; *IP Closed Captioning Order*, 27 FCC Rcd at 846-47, ¶ 101.

³⁰⁸ *See* House Committee Report at 30 (explaining that Section 203(a) is meant to “ensure[] that devices *consumers use* to view video programming are able to . . . decode, and make available the transmission of video description services, and decode and make available emergency information”) (emphasis added); Senate Committee Report at 14 (same).

professional or commercial equipment is accessible to employees with disabilities³⁰⁹ or enables the delivery of accessible services.³¹⁰

73. *Display-only monitors.* Section 203 of the CVAA provides that “any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements [of Section 303(u)(1)].”³¹¹ We find that the exemption for display-only video monitors is self-explanatory and thus we incorporate the language of the statutory provision directly into our rules. We also provide that a manufacturer may make a request for a Commission determination as to whether its apparatus qualifies for this exemption.³¹² We note that no commenters address this issue. A manufacturer may make a request for a Commission determination as to whether its device qualifies for the display-only monitor exemption pursuant to Section 1.41 of the Commission’s rules.³¹³

74. *Mobile DTV.* We find that the apparatus requirements adopted herein apply to mobile DTV apparatus because such apparatus make available video programming through mobile DTV services, which are provided by television broadcast stations subject to Sections 79.2 and 79.3 of our rules.³¹⁴ NAB does not dispute that the apparatus requirements apply to mobile DTV apparatus; however, it argues that the Commission “should not dictate transmission standards in the rapidly evolving mobile environment,” but instead “should afford flexibility to ensure that program originators and equipment manufacturers are able to decode and integrate additional audio information.”³¹⁵ We are concerned that allowing mobile DTV broadcasters to provide aural emergency information by means other than the secondary audio stream would not be effective because manufacturers may not include functionality for an alternate approach in their apparatus, and thus emergency information may be inaccessible to consumers. Additionally, we note that the few mobile DTV devices currently on the market already support multiple audio streams. This demonstrates that support of the secondary audio stream is technically possible and may be the most appropriate means of providing emergency information and video description on mobile DTV apparatus.³¹⁶ While we apply the same video description and emergency information requirements to mobile DTV apparatus as to other covered apparatus, to the extent that broadcasters find it preferable to use something besides a secondary audio stream to provide emergency information via mobile DTV, the Commission may consider waiver requests if supported by both broadcasters and manufacturers.³¹⁷

³⁰⁹ Title I of the ADA requires private and state and local government employers with more than 15 employees to provide reasonable accommodations to applicants and employees with disabilities. See 42 U.S.C. §§ 12111-12117. A similar obligation applies to the federal government with respect to all federal employees with disabilities under Section 501 of the Rehabilitation Act. 29 U.S.C. § 791.

³¹⁰ See, for example, Part A of Title II and Title III of the ADA. 42 U.S.C. §§ 12131-12134, 12181-12189.

³¹¹ 47 U.S.C. § 303(u)(2)(B).

³¹² *NPRM*, 27 FCC Rcd at 14748-49, ¶ 36; *IP Closed Captioning Order*, 27 FCC Rcd at 850, ¶ 108.

³¹³ See 47 C.F.R. § 1.41 (informal requests for Commission action).

³¹⁴ Mobile DTV apparatus receive programming from broadcasters, generally a copy of the broadcaster’s primary video stream, over a portion of the broadcaster’s primary video spectrum which has been reallocated for this purpose. See Mobile Content Venture at www.dyle.tv/mcv/overview.

³¹⁵ See Letter from Ann West Bobeck, Senior VP and Deputy General Counsel, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, at 1 (Feb. 19, 2013). See also NAB Feb. 8 *Ex Parte* Letter at 1.

³¹⁶ See Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 13, 2013).

³¹⁷ See 47 C.F.R. § 1.3.

C. Alternate Means of Compliance

75. We implement a similar approach to alternate means of compliance to the approach we adopted in the *IP Closed Captioning Order*.³¹⁸ Pursuant to Section 203 of the CVAA, an entity may meet the emergency information and video description requirements “through alternate means than those” adopted herein.³¹⁹ In the *NPRM*, we sought comment on our proposal to implement the same approach to alternate means of compliance that we adopted in the *IP Closed Captioning Order*, and we asked whether we should instead impose certain standards that any permissible alternate means must meet, given the nature of emergency information.³²⁰ We received very little comment on our implementation of this provision.³²¹ As proposed in the *NPRM*, we adopt a similar approach to the one adopted in the *IP Closed Captioning Order*, *i.e.*, rather than specifying what may constitute a permissible alternate means, we will address specific requests from parties subject to the new rules on a case-by-case basis. Unlike the approach taken in the *IP Closed Captioning Order*, however, we will only permit an entity that seeks to use an “alternate means” to comply with the apparatus requirements adopted herein to request a Commission determination that the proposed alternate means satisfies the statutory requirements through a request pursuant to Section 1.41 of our rules.³²² We will not permit an entity to claim in defense to a complaint or enforcement action that the Commission should determine that the party’s actions were a permissible alternate means of compliance.³²³ We find that this is the best approach, given the uniquely heightened public interest in emergency information, and the importance of ensuring that consumers know how they can use their apparatus to obtain emergency information provided via the secondary audio stream. Moreover, we believe few manufacturers should need to avail themselves of alternate means of compliance because most covered apparatus already make secondary audio streams available today. We also believe that the burden, if any, on such manufacturers is outweighed by the uniquely heightened public interest in emergency information, and that it will be beneficial to manufacturers to know in advance, before manufacturing a product, that their product will comply with Commission requirements.

D. Compliance Deadlines

76. We conclude that two years from the date of *Federal Register* publication is the appropriate deadline by which device manufacturers must comply with the emergency information and video description requirements of Section 203 of the CVAA, as implemented herein. The CVAA does not specify the time frame by which the Section 203 requirements must become effective,³²⁴ nor did the VPAAC recommend a compliance deadline. The *NPRM* sought comment on an appropriate deadline and

³¹⁸ *NPRM*, 27 FCC Rcd 14749, ¶ 37; *IP Closed Captioning Order*, 27 FCC Rcd at 858-59, ¶ 121.

³¹⁹ “An entity may meet the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (d) if the requirements of those sections are met, as determined by the Commission.” Pub. L. No. 111-260, § 203(e).

³²⁰ *NPRM*, 27 FCC Rcd at 14749, ¶ 37.

³²¹ See NAB Comments at 15 (“While certain potential benefits may be unattainable in the present, the Commission should allow television broadcasters, MVPD providers and device manufacturers the flexibility to explore using emerging technologies or other methods as an alternate means of making emergency information accessible to the widest possible audiences.”); Wireless RERC Comments at 14 (“The Wireless RERC encourages industry to examine methods that may be more seamless, expedient and accessible. However, before employing the use of an ‘alternate means’ we recommend a requirement that the Commission approve its use to assure the technology is compliant with disability access rules.”).

³²² 47 C.F.R. § 1.41.

³²³ See Wireless RERC Comments at 14 (recommending that the Commission approve any alternate means before a manufacturer employs the use of such means “to assure the technology is compliant with disability access rules”).

³²⁴ See Pub. L. No. 111-260, § 203(d).

we received comments from ACB and some industry commenters on this issue. While ACB supports a compliance deadline of no more than 18 months,³²⁵ there is widespread industry support for a deadline of two years from the date of *Federal Register* publication.³²⁶ The secondary audio stream is currently used for video description, and pursuant to this *Report and Order* it will be used for aural emergency information as well. Because televisions and navigation devices have long included the ability to access secondary audio streams, we do not expect any further action will need to be taken by manufacturers of most apparatus subject to the rules to come into compliance. We find that a two-year compliance deadline is nevertheless appropriate, as it will coincide with the Section 202 emergency information deadline discussed above, and it is logical to require the use of the secondary audio stream to provide emergency information by the same date that the apparatus requirements pertaining to the secondary audio stream become effective.³²⁷ A two-year compliance deadline is also consistent with the precedent from the Commission's implementation of other recent apparatus requirements, which were based upon the time generally needed to implement apparatus modifications.³²⁸

77. We clarify that the compliance deadline refers only to the date of manufacture. In its petition for reconsideration of the *IP Closed Captioning Order*, CEA requests that the deadline for compliance with the IP closed captioning rules should be interpreted to refer only to the date of manufacture.³²⁹ In the present proceeding, CEA similarly argues that the Commission should add explanatory notes to Sections 79.105(a) and 79.106(a) stating that the new obligations in those provisions "place no restriction on the importing, shipping or sale of apparatus that were manufactured before" the deadline for compliance with the apparatus requirements for emergency information and video description.³³⁰ We find that this approach would be consistent with the Commission's past practices regarding similar equipment deadlines.³³¹ The Consumer Groups assert that the proposal to consider only the date of manufacture risks consumer confusion because consumers would not know whether the products they purchase are accessible.³³² We find that a compliance deadline based on the date of importation or the date of sale would be inappropriate, given that the manufacturer often does not control the date of importation or sale. Further, because of the brief intervals between the date of manufacture and the date of importation, a labeling requirement to address such situations would impose compliance

³²⁵ ACB Comments at 2-3.

³²⁶ CEA Comments at 3, 13; ESA Comments at 7; TIA Comments at 2, 8-9; CEA Reply at 7-8; Verizon Reply at 3, 7; CEA Jan. 24 *Ex Parte* Letter at 2; CEA Feb. 1 *Ex Parte* Letters at 2; CEA Feb. 8 *Ex Parte* Letters at 2; CEA Mar. 15 *Ex Parte* Letter at 2.

³²⁷ *See supra* Section III.D.

³²⁸ *See, e.g., IP Closed Captioning Order*, 27 FCC Rcd at 859, ¶ 122. *See also* CEA Comments at 13; ESA Comments at 7; CEA Reply at 8; Verizon Reply at 7-8.

³²⁹ *See* CEA Recon. Petition at 19-20.

³³⁰ CEA Comments at 12; CEA Jan. 24 *Ex Parte* Letter at 2; CEA Feb. 1 *Ex Parte* Letters at 2; CEA Feb. 8 *Ex Parte* Letters at 2.

³³¹ *See, e.g.,* Notes to 47 C.F.R. §§ 15.120(a), 79.101(a)(1), 79.102(a)(1), (2). *See also* CEA Comments at 12-13.

³³² Consumer Groups Reply at 18 (proposing that the Commission clarify that the compliance deadline does *not* only refer to the date of manufacture, or require manufacturers to conspicuously label products with information regarding their accessibility features). *See also* Consumer Groups Feb. 15 *Ex Parte* Letter at 3 (proposing that the Commission set a compliance deadline based on the date of sale, or require labeling for noncompliant products); Consumer Groups Feb. 27 *Ex Parte* Letter at 4 (same); Consumer Groups Mar. 4 *Ex Parte* Letter at 4 (same); Consumer Groups Mar. 7 *Ex Parte* Letter at 4 (same); Consumer Groups Mar. 11 *Ex Parte* Letter at 4 (same).

costs with little practical benefit.³³³ For these reasons, we add explanatory notes to Sections 79.105(a) and 79.106(a) of our rules to clarify that those rules place no restrictions on the importing, shipping, or sale of apparatus that were manufactured before the compliance deadline.

E. Complaint Procedures

78. We adopt the procedures proposed in the *NPRM* for the filing of complaints alleging violations of the Commission's rules requiring apparatus designed to receive, play back, or record video programming to make available emergency information and video description services.³³⁴ As proposed in the *NPRM* and consistent with the apparatus complaint procedures adopted in the *IP Closed Captioning Order*,³³⁵ complaints alleging a violation of the apparatus rules related to emergency information and video description should include: (a) the name, postal address, and other contact information, such as telephone number or email address, of the complainant; (b) the name and contact information, such as postal address, of the apparatus manufacturer or provider;³³⁶ (c) information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information; (d) the date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information; (e) a statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules; (f) the specific relief or satisfaction sought by the complainant; and (g) the complainant's preferred format or method of response to the complaint. A complaint alleging a violation of the Section 203 apparatus requirements adopted herein may be transmitted to the Consumer and Governmental Affairs Bureau³³⁷ by any reasonable means, such as the Commission's online informal complaint filing system,³³⁸ letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), e-mail,³³⁹ or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted herein

³³³ In the IP closed captioning proceeding, CEA explains that "there typically is only a short lag time between manufacture and importation of any given apparatus. Depending on the equipment type and the place of manufacture, the length of this lag time varies from two to three days for truck shipments to the United States to about two to three weeks for shipments by sea." See Letters from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 11-154, at 3 (July 12, 2012).

³³⁴ *NPRM*, 27 FCC Rcd at 14745, ¶ 29. The record contains little discussion of the proposed apparatus complaint procedures, and we see no reason to deviate from the procedures proposed in the *NPRM*. We reject Verizon's proposal that, if the Commission believes an informal complaint process is necessary, it should require complainants to confirm that they first attempted to resolve the matter directly with the manufacturer or provider. Verizon Reply at 8. We did not adopt such a requirement in the *IP Closed Captioning Order*, also implementing Section 203 of the CVAA, and we see no need to do so here, where consumers may have difficulty identifying the manufacturer or provider.

³³⁵ *IP Closed Captioning Order*, 27 FCC Rcd at 859-60, ¶ 123.

³³⁶ We do not expect consumers to locate the names and addresses of manufacturers in all instances. For example, if a consumer uses a set-top box provided by its MVPD, then the consumer may indicate the MVPD's name and contact information. See also Pierce Comments at 6.

³³⁷ The Consumer and Governmental Affairs Bureau reserves the discretion to refer complaints that reveal a pattern of noncompliance to the Commission's Enforcement Bureau.

³³⁸ Kelly Pierce asserts that the word limit for electronically filed consumer complaints is "completely inadequate." Pierce Comments at 6. Although this issue is outside the scope of this proceeding, we take note of it and will consider its merits in future updates to the electronic consumer complaint system.

³³⁹ See *id.* (requesting that the Commission permit e-mail filing so that blind individuals can easily and independently file complaints).

will be blind or visually impaired, we also note that, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer.

79. The Commission will forward complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved. The Commission may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or to adjudicate potential violations of Commission rules. After the apparatus rules adopted in this *Report and Order* become effective, the Consumer and Governmental Affairs Bureau will release a consumer advisory with instructions on how to file complaints in various formats, including via the Commission's website.³⁴⁰

V. FURTHER NOTICE OF PROPOSED RULEMAKING

80. *Provision of linear programming to mobile and other devices.* We seek comment on whether, when an MVPD, as defined in the Commission's rules,³⁴¹ permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices, it is acting as a "video programming distributor"³⁴² that is providing "video programming"³⁴³ and is covered by the emergency information rules adopted herein.³⁴⁴ We also seek comment on whether, under this approach, an MVPD should be required to ensure that any application or plug-in³⁴⁵ that it provides to the consumer to access this programming is capable of making the emergency information audible on a secondary audio stream. For example, Cablevision currently permits consumers to access its entire package of video programming, including broadcast channels that contain emergency information, via tablets, laptops, smartphones, and similar devices.³⁴⁶ Should

³⁴⁰ As it did in the *IP Closed Captioning Order*, the Commission further directs the Consumer and Governmental Affairs Bureau to revise the existing complaint form for disability access complaints (Form 2000C) in accordance with this *Report and Order*, to facilitate the filing of complaints alleging violations of the apparatus requirements adopted herein. See *IP Closed Captioning Order*, 27 FCC Rcd at 860, n. 503. Should the apparatus rules adopted in this *Report and Order* become effective before the revised Form 2000C is available to consumers, apparatus complaints may be filed in the interim by any reasonable means, as explained above.

³⁴¹ The Commission's rules define an MVPD as "an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming." See 47 C.F.R. § 76.1000(e).

³⁴² See *id.* § 79.1(a)(2) (defining "video programming distributor" to include any television broadcast station, MVPD, and "any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission").

³⁴³ See *id.* § 79.1(a)(1) (defining "video programming" to mean "[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use").

³⁴⁴ We do not believe it is necessary to reach the question of whether this service is provided by an MVPD or an "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," as both are covered entities. *Id.* § 79.1(a)(2). We note that our inquiry is based on the specific definitions contained in Section 79.1 of the Commission's rules and thus is limited to application of the emergency information requirements in the CVAA, 47 U.S.C. § 613(g), and should not be read to imply a classification of these services for any other purpose. We seek comment on this issue.

³⁴⁵ A "plug-in" is defined as "[a] program of data that enhances, or adds to, the operation of a (usually larger) parent program." See H. Newton, *Newton's Telecom Dictionary* 642 (20th ed. 2004).

³⁴⁶ Cablevision delivers programming both to traditional set-top boxes and to IP devices using "its secure and proprietary Advanced Digital Cable television network to deliver cable programming to customers for viewing on the Optimum App for iPad [and other devices] and content is not delivered over the Internet. . . . Customers do not need to have Internet access to use the Optimum App for iPad." See Cablevision's New Optimum App Delivers the Full Cable Television Experience to an iPad in the Home, Apr. 2, 2011, *available at* (continued....)

Cablevision be required to ensure that any emergency information contained in the programming it makes available on tablets and other devices is audible by means of a secondary stream? We recognize that some MVPDs currently enable subscribers to access linear video programming inside the home as well as outside the home (e.g., TV Everywhere offerings). Should our rules apply to both situations – irrespective of where the subscriber may physically be when accessing the programming? Does it matter whether the emergency content is being delivered over the MVPD’s IP network or over the Internet?

81. At the same time, we seek comment on whether instead of placing obligations on MVPDs to make the emergency information accessible on the types of devices described above, it should be the obligation of the apparatus manufacturer, under Section 203, to ensure that the devices are capable of receiving the secondary audio stream.³⁴⁷ Or, do both the MVPD and the manufacturer have a role in facilitating the provision of the secondary audio stream on these types of devices?

82. What technological hurdles, if any, prevent or impede the delivery of the secondary audio service on mobile devices and personal computers? How much time is necessary for MVPDs and/or manufacturers to come into compliance and ensure that consumers can access the secondary audio stream on a mobile device or personal computer?

83. *Provision of video description services on mobile or other devices.* We note that the Commission’s existing video description rules currently apply to “MVPD systems.”³⁴⁸ Specifically, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children’s programming on each of the top five national nonbroadcast networks that they carry on those systems.³⁴⁹ Further, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the programming has the technical capability necessary to pass through the video description and if that technology is not being used for another purpose related to the programming.³⁵⁰ In discussions with industry in the context of the current proceeding, it has come to our attention that the pass-through obligations of an MVPD system may not be clear to the extent that the MVPD allows subscribers to access “video programming”³⁵¹ via tablets, laptops, personal computers, smartphones, or similar devices. To provide additional clarity on this issue, we seek comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices. Because video description is provided using secondary audio streams, we seek comment on whether an

(Continued from previous page)

<http://www.prnewswire.com/news-releases/cablevisions-new-optimum-app-delivers-the-full-cable-television-experience-to-an-ipad-in-the-home-119117379.html>.

³⁴⁷ See CEA Mar. 15 *Ex Parte* Letter at 2 (“To the extent that devices interact with video delivered via [IP], they are not covered by the new apparatus rules to be adopted pursuant to the [NPRM], and manufacturers of these devices should not be responsible for video programming applications developed by third parties.”) (footnote omitted).

³⁴⁸ 47 C.F.R. §§ 79.3(b)(4)-(5).

³⁴⁹ *Id.* § 79.3(b)(4). See also 2011 *Video Description Order*, 26 FCC Rcd at 11849-50, ¶ 4. The top five national nonbroadcast networks must reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the video description rules. 47 C.F.R. § 79.3(b)(4). See also 2011 *Video Description Order*, 26 FCC Rcd at 11854-55, ¶¶ 12-15. For purposes of the rule, the top five nonbroadcast networks are USA, the Disney Channel, TNT, Nickelodeon, and TBS. 2011 *Video Description Order*, 26 FCC Rcd at 11854, ¶ 12.

³⁵⁰ 47 C.F.R. §§ 79.3(b)(5)(i)-(ii). See also 2011 *Video Description Order*, 26 FCC Rcd at 11850, ¶ 4.

³⁵¹ See 47 C.F.R. § 79.3(a)(4) (defining “video programming” as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media”).

MVPD must ensure that any application or plug-in that it provides to the consumer to access linear video programming is capable of providing or passing through video description on a secondary audio stream, regardless of the type of device (e.g., tablets, laptops, personal computers, smartphones) the consumer uses to access such programming. How, if at all, should we apply in this context the technical capability exception to the video description requirements, pursuant to which the pass-through requirement does not apply when an MVPD lacks the technical capability necessary to pass through video description?³⁵² What obligations, if any, fall on the manufacturers to ensure that these devices are capable of receiving the secondary audio stream, pursuant to Section 203 of the CVAA?³⁵³

84. We also seek comment on whether additional time is needed for MVPDs and/or manufacturers to comply with the video description rules for linear video programming services provided via tablets, laptops, personal computers, smartphones, or similar devices. We note, for example, that the Commission in the *2011 Video Description Order* gave mobile DTV additional time for compliance.³⁵⁴ Should the same timeframe apply for both emergency information and video description purposes? We note that, as a technical matter, once the secondary audio stream is received by a device, that stream can be made available regardless of whether it is used for emergency information or video description.

85. *Tagging of the secondary audio stream.* As explained above, we are concerned that some consumers may be unable to find and activate an audio stream tagged as “visually impaired” (“VI”), which is the label dictated by the digital television standard, and that the audio stream used for video description must be labeled as “complete main” (“CM”) instead.³⁵⁵ Further, it has been reported that some television receivers do not properly handle two audio tracks identified as English, and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description. Although the *NPRM* sought comment on this issue,³⁵⁶ the record is not yet sufficiently detailed for us to address these very technical matters. We recognize that broadcasters and MVPDs have not yet developed a solution pursuant to which tagging the video description stream as VI, to help consumers locate the stream, would be compatible with accessing the secondary audio stream on all equipment, including older equipment. In the absence of an industry solution to this problem, should the Commission mandate that the video description stream include a particular tag, and that all apparatus subject to the rules adopted herein enable consumers to access a video description stream with that tag? If so, is the “visually impaired” (“VI”) tag the one that the Commission should mandate? What would broadcasters and manufacturers need to do to comply with such a requirement? What deadline should the Commission impose by which broadcasters and manufacturers must comply with any such requirement? How can the Commission ensure that such a requirement does not affect consumers who have not upgraded their equipment? How can we minimize any confusion or cost to such consumers, and specifically, how can we mitigate the need for consumers to purchase new equipment to take advantage of the tagging requirements discussed herein? What other steps should the Commission take to ensure that the content of the secondary audio stream is properly tagged, for example so that a video description stream is tagged as video description and not as foreign

³⁵² See *2011 Video Description Order*, 26 FCC Rcd at 11860, ¶ 23.

³⁵³ See 47 U.S.C. §§ 303(u)(1), (z)(1) (imposing video description requirements on apparatus designed to receive, play back, or record video programming).

³⁵⁴ See *2011 Video Description Order*, 26 FCC Rcd at 11875, ¶ 57 (“Given the nascency of this service, and the fact that requiring pass-through of video description with Mobile DTV broadcasts would have little benefit to consumers at this time, we agree with NAB that it is appropriate to delay the effectiveness of these rules.”).

³⁵⁵ See *supra* Section IV.A.5. In that section we explain that in this context, a “tag” refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.

³⁵⁶ *NPRM*, 27 FCC Rcd at 14742-43, ¶ 24.

language audio? We also invite comment on any other issues relevant to this portion of the *Further Notice*.

86. *Customer support services.* As explained above, although we request, but do not at this time require, that entities subject to the requirements adopted herein pursuant to Sections 202 and 203 of the CVAA provide dedicated customer support services to assist consumers who are blind or visually impaired with accessing the secondary audio stream, we seek further comment on this issue.³⁵⁷ Should the Commission require covered entities to provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams? Should customer support services consist of a dedicated telephone number, an accessible chat feature on the covered entity's website, or a different means by which regulated entities should provide customer support? How should such a requirement apply to manufacturers, which may not maintain an ongoing direct-to-consumer relationship? Should the Commission adopt contact information requirements comparable to those applicable to the television closed captioning rules, to require covered entities to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues?³⁵⁸ What contact information should the Commission require of entities subject to the requirements adopted herein, and how should that information be made available to consumers?³⁵⁹ Instead of following the model of the television closed captioning rules, should we adopt contact information requirements comparable to those applicable to the IP closed captioning rules?³⁶⁰ Are there other ways by which entities subject to the requirements adopted herein can best provide assistance to consumers who are blind or visually impaired with accessing the secondary audio stream? Finally, we invite comment on any additional issues relevant to this portion of the *Further Notice*.

VI. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

87. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),³⁶¹ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order* in MB Docket No. 12-107. The FRFA is set forth in Appendix C.

88. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") relating to the *Further Notice*. The IRFA is attached to this *Report and Order and Further Notice of Proposed Rulemaking* as Appendix D.

³⁵⁷ See *supra* Sections III.B.1, IV.A.3.

³⁵⁸ See 47 C.F.R. § 79.1(i)(1)-(2).

³⁵⁹ See *id.* § 79.1(i)(3) (requiring television video programming distributors to file the contact information described in that section with the Commission, and to notify the Commission each time there is a change in any of the required information).

³⁶⁰ See *id.* § 79.4(c)(2)(iii).

³⁶¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 ("CWAAA").

B. Paperwork Reduction Act

89. The *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13.³⁶² The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

90. The *Further Notice* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

C. Congressional Review Act

91. The Commission will send a copy of the *Report and Order* in MB Docket No. 12-107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Ex Parte Rules

92. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁶³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed

³⁶² Information collection requirements include: (1) the filing and processing of complaints alleging violations of the Commission’s rules pertaining to accessible emergency information, pursuant to revised Section 79.2(c); (2) the filing and processing of complaints alleging violations of the Commission’s apparatus requirements for emergency information and video description; (3) the filing and processing of requests for waiver of the apparatus requirements on the basis of technical feasibility, pursuant to Section 79.105(a); (4) the filing and processing of requests for waiver of the apparatus requirements on the basis of achievability, pursuant to Section 79.105(b)(3); (5) the filing and processing of requests for a purpose-based waiver of the apparatus requirements, pursuant to Section 79.105(b)(4); and (6) the submission and review of consumer eligibility information pertaining to the waiver granted to DIRECTV with respect to the provision of aural emergency information during The Weather Channel’s programming on all set-top boxes.

³⁶³ 47 C.F.R. §§ 1.1200 *et seq.*

consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

E. Filing Requirements

93. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

94. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

95. People with Disabilities. 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 FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

F. Additional Information

96. For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, or Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

VII. ORDERING CLAUSES

97. Accordingly, **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617, this *Report and Order and Further Notice of Proposed Rulemaking* **IS ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*, except for Sections 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised Section 79.2(c), which shall become effective upon announcement in the *Federal Register* of OMB approval and an effective date of the rules.

98. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

99. **IT IS FURTHER ORDERED** that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, all waiver requests pursuant to Sections 1.3 or 79.105(b)(4) of the Commission's rules, 47 C.F.R. §§ 1.3, 79.105(b)(4), and all informal requests for Commission action pursuant to Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, filed under these rules and pursuant to Sections 202 and 203 of the CVAA as discussed herein.

100. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12-107, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

101. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12-107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters****Comments filed in MB Docket No. 12-107**

American Council of the Blind (ACB)
American Foundation for the Blind (AFB)
AT&T Services, Inc.
Consumer Electronics Association (CEA)
DIRECTV, LLC
DISH Network L.L.C.
Entertainment Software Association (ESA)
National Association of Broadcasters (NAB)
National Cable & Telecommunications Association (NCTA)
National Public Radio, Inc. (NPR)
Pierce, Kelly
Rehabilitation Engineering Research Center on Telecommunications Access and Consumer Groups
(Consumer Groups)¹
Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)
Telecommunications Industry Association (TIA)
The Weather Channel, LLC

Reply Comments filed in MB Docket No. 12-107

AT&T Services, Inc.
CenturyLink, Inc.
Consumer Electronics Association (CEA)
CTIA-The Wireless Association (CTIA)
Groupo Communications LLC
National Association of Broadcasters (NAB)
Rehabilitation Engineering Research Center on Telecommunications Access and Consumer Groups
(Consumer Groups)²
Telecommunications Industry Association (TIA)
Verizon
Young, Faith

¹ This comment was filed by: Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI); American Association of the Deaf-Blind (AADB); National Association of the Deaf (NAD); and Rehabilitation Engineering Research Center on Telecommunications Access.

² This reply comment was filed by: Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI); American Association of the Deaf-Blind (AADB); National Association of the Deaf (NAD); Deaf and Hard of Hearing Consumer Advocacy Center (DHHCAN); Hearing Loss Association of America (HLAA); Association of Late-Deafened Adults (ALDA); Cerebral Palsy and Deaf Organization (CPADO); and Rehabilitation Engineering Research Center on Telecommunications Access).

APPENDIX B**Final Rules**

The Federal Communications Commission amends Part 79 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 79 – Closed Captioning and Video Description of Video Programming.

1. The authority citation for Part 79 will continue to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Amend § 79.2 by revising paragraphs (b) and (c) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

* * * * *

(b) * * *

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1 of this part.

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

(i) Emergency information that is provided visually during a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired; and

(ii) 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 [INSERT DATE TWO YEARS AFTER FEDERAL REGISTER PUBLICATION] 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 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) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(4) Video programming distributors must ensure that emergency information does not block any closed captioning and any closed captioning does not block any emergency information provided by means other than closed captioning.

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with § 79.2(b)(2)(ii) supersedes all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

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

3. Add § 79.105 to read as follows:

§ 79.105 Video description and emergency information accessibility requirements for all apparatus.

(a) Effective [INSERT DATE TWO YEARS AFTER FEDERAL REGISTER PUBLICATION], all apparatus that (i) is designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to §§ 79.2 and 79.3 of this Part, (ii) is manufactured in the United States or imported for use in the United States, and (iii) uses a picture screen of any size, must have the capability to decode and make available the secondary audio stream if technically feasible, unless otherwise provided in this section, which will facilitate the following services:

- (1) The transmission and delivery of video description services as required by § 79.3 of this Part; and
- (2) Emergency information (as that term is defined in § 79.2 of this Part) in a manner that is accessible to individuals who are blind or visually impaired.

Note 1 to paragraph (a): Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

Note 2 to paragraph (a): This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before [INSERT DATE TWO YEARS AFTER FEDERAL REGISTER PUBLICATION].

(b) *Exempt apparatus.* (1) *Display-only monitors.* Apparatus or class of apparatus that are display-only video monitors with no playback capability are not required to comply with the provisions of this section.

(2) *Professional or commercial equipment.* Apparatus or class of apparatus that are professional or commercial equipment not typically used by the public are not required to comply with the provisions of this section.

(3)(i) *Achievable*. Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the video description and emergency information requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

(ii) The petitioner or respondent must support a petition for exemption or a response to a complaint with sufficient evidence to demonstrate that compliance with the requirements of this section is not “achievable” where “achievable” means with reasonable effort or expense. The Commission will consider the following factors when determining whether the requirements of this section are not “achievable:”

(A) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(B) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(C) The type of operations of the manufacturer or provider; and

(D) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(4) *Waiver*. Manufacturers of apparatus may petition the Commission for a full or partial waiver of the requirements of this section, which the Commission may grant upon a finding that the apparatus meets one of the following provisions:

(i) The apparatus is primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) The apparatus is designed for multiple purposes, capable of receiving or playing back video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(c) *Interconnection*. Covered apparatus shall use interconnection mechanisms that make available the audio provided via a secondary audio stream.

4. Add § 79.106 to read as follows:

§ 79.106 Video description and emergency information accessibility requirements for recording devices.

(a) Effective [INSERT DATE TWO YEARS AFTER FEDERAL REGISTER PUBLICATION], all apparatus that (i) is designed to record video programming transmitted simultaneously with sound that is provided by entities subject to §§ 79.2 and 79.3 of this Part, and (ii) is manufactured in the United States or imported for use in the United States, must comply with the provisions of this section except that apparatus must only do so if it is achievable as defined in § 79.105(b)(3).

Note 1 to paragraph (a): Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

Note 2 to paragraph (a): This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before [INSERT DATE TWO YEARS AFTER FEDERAL REGISTER PUBLICATION].

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of video description signals and emergency information (as that term is defined in § 79.2 of this Part) such that viewers are able to activate and de-activate the video description as the video programming is played back on a picture screen of any size.

(c) All apparatus subject to this section must comply with the interconnection mechanism requirements in § 79.105(c).

APPENDIX C

Final Regulatory Flexibility Analysis for the *Report and Order*

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rulemaking* in this proceeding.² The Federal Communications Commission (“Commission”) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),⁴ the *Report and Order* adopts 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. Section 202 of the CVAA directs the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners⁶ to convey emergency information in a manner accessible to individuals who are blind or visually impaired.⁷ The *Report and Order* implements 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

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

² 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*, Notice of Proposed Rulemaking, 27 FCC Rcd 14728 (2012) (“*NPRM*”).

³ See 5 U.S.C. § 604.

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 foregoing are collectively referred to herein as 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 Section 79.1 of the Commission’s rules defines the terms “video programming distributor” and “video programming provider.” 47 C.F.R. §§ 79.1(a)(2)-(3). It does not define the term “program owner.”

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.

newscasts, for example, in an on-screen crawl.⁹ This requirement, which has widespread industry support, will serve the public interest by ensuring that televised emergency information is accessible to individuals who are blind or visually impaired. Further, as directed by Section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description¹⁰ services and accessible emergency information.¹¹ Specifically, the apparatus rules require that certain apparatus make available the secondary audio stream, which is currently used to provide video description and which will be used to provide aural emergency information. The apparatus requirements will benefit individuals who are blind or visually impaired by ensuring that apparatus on which consumers receive, play back, or record video programming are capable of accessing emergency information and video description services. We understand that most apparatus subject to the rules already comply with these requirements.

3. As discussed in Section III of the *Report and Order*, we adopt emergency information requirements for video programming distributors, video programming providers, and program owners pursuant to Section 202(a) of the CVAA. Specifically, we adopt rules that will:

- Clarify that the new emergency information requirements apply to video programming provided by entities that are covered by Section 79.2 of the Commission's rules – *i.e.*, broadcasters, MVPDs, 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;
- Require that covered entities make an aural presentation of emergency information that is provided visually in non-news broadcast programming available on a secondary audio stream;
- Continue to require the use of an aural tone to precede emergency information on the main program audio, and now also require use of the aural tone to precede emergency information on the secondary audio stream;
- Permit, but do not require, the use of text-to-speech (“TTS”) technologies as a method for providing an aural rendition of emergency information, and impose qualitative requirements if TTS is used;
- Require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full;
- Require that emergency information supersede all other programming on the secondary audio stream;
- Decline to make any substantive revisions to the current definition of emergency information, but clarify that severe thunderstorms and other severe weather events are included within the current definition;
- Revise the emergency information rule, as required by the statute, to include video programming providers (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors, and to allocate responsibilities among covered entities;
- Adopt a compliance deadline of two years from the date of *Federal Register* publication for compliance with the emergency information rules adopted in the *Report and Order*; and

⁹ See *Report and Order* Section III.B.1.

¹⁰ “Video 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).

¹¹ 47 U.S.C. §§ 303(u), (z), 330(b). See *Report and Order* Section IV.A.

- Grant waivers to The Weather Channel, LLC (“The Weather Channel”) and DIRECTV, LLC (“DIRECTV”) to provide them with additional time and flexibility to come into compliance with the rules adopted herein with regard to the provision of local weather alerts during The Weather Channel’s programming via devices that are not currently capable of providing aural emergency information on a secondary audio stream.

4. As discussed in Section IV of the *Report and Order*, we adopt apparatus requirements for emergency information and video description pursuant to Section 203 of the CVAA. Specifically, we adopt rules that will:

- Require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available, because such streams are the existing mechanism for providing video description and the new mechanism for making emergency information accessible;
- Decline at this time to adopt specific performance and display standards or policies addressing certain issues from the 2011 video description proceeding;
- Permit, but do not require, covered apparatus to contain TTS capability;
- Limit applicability of the apparatus requirements, at this time, to apparatus designed to receive, play back, or record video programming provided by entities subject to Sections 79.2 and 79.3 of our rules;
- Apply the apparatus requirements to removable media players, but not to professional and commercial equipment or display-only monitors;
- Find that the apparatus requirements adopted in the *Report and Order* apply to mobile digital television (“mobile DTV”) apparatus because such apparatus make available mobile DTV services, which are provided by television broadcast stations subject to Sections 79.2 and 79.3 of our rules;
- Implement the statutory provision that permits alternate means of compliance;
- Adopt a compliance deadline of two years from the date of *Federal Register* publication for compliance with the apparatus rules adopted in the *Report and Order*; and
- Adopt procedures for complaints alleging violations of the apparatus requirements adopted in the *Report and Order*.

B. Legal Basis

5. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. No comments were filed in response to the IRFA.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the *Report and*

*Order.*¹² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁴ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).¹⁵

8. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of “Wired Telecommunications Carriers,” which is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹⁶ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁷ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁸ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.¹⁹ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

9. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.²⁰ Industry data indicate that all but ten cable operators nationwide are small under this size standard.²¹ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²² Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an

¹² 5 U.S.C. § 603(b)(3).

¹³ *Id.* § 601(6).

¹⁴ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁵ 15 U.S.C. § 632.

¹⁶ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers.

¹⁷ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

¹⁸ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

¹⁹ *See id.*

²⁰ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

²¹ *See* BROADCASTING & CABLE YEARBOOK 2010 at C-2 (2009) (data current as of Dec. 2008).

²² 47 C.F.R. § 76.901(c).

additional 258 systems have 10,000-19,999 subscribers.²³ Thus, under this standard, most cable systems are small.

10. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²⁴ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁵ Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard.²⁶ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁷ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

11. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”²⁸ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.²⁹ The Commission has estimated the number of licensed commercial television stations to be 1,387.³⁰ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.³¹ We therefore estimate that the majority of commercial television broadcasters are small entities.

12. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations³² must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on

²³ See TELEVISION & CABLE FACTBOOK 2009 at F-2 (2009) (data current as of Oct. 2008). The data do not include 957 systems for which classifying data were not available.

²⁴ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

²⁵ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

²⁶ See BROADCASTING & CABLE YEARBOOK 2010 at C-2 (2009) (data current as of Dec. 2008).

²⁷ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.901(f).

²⁸ U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2007>.

²⁹ 13 C.F.R. § 121.201; NAICS code 515120.

³⁰ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

³¹ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

³² “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 21.103(a)(1).

which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

13. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.³³ These stations are non-profit, and therefore considered to be small entities.³⁴

14. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”³⁵ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³⁶ Census data for 2007 shows that there were 31,996 establishments that operated that year.³⁷ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.³⁸ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (“EchoStar”) (marketed as the DISH Network).³⁹ Each currently offers subscription services. DIRECTV⁴⁰ and EchoStar⁴¹ each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

15. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average

³³ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012, http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

³⁴ See generally 5 U.S.C. §§ 601(4), (6).

³⁵ See 13 C.F.R. § 121.201, 2007 NAICS code 517110. The 2007 NAICS definition of the category of “Wired Telecommunications Carriers” is in paragraph 8, above.

³⁶ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

³⁷ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

³⁸ See *id.*

³⁹ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 580, ¶ 74 (2009) (“13th Annual Report”). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (“Dominion”) (marketed as Sky Angel). See Public Notice, “Policy Branch Information; Actions Taken,” Report No. SAT-00474, 22 FCC Rcd 17776 (IB 2007).

⁴⁰ As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. See *13th Annual Report*, 24 FCC Rcd at 687, Table B-3.

⁴¹ As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. See *13th Annual Report*, 24 FCC Rcd at 687, Table B-3. As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving “Sky Angel” service from DISH Network. See *id.* at 581, ¶ 76.

annual receipts, under SBA rules.⁴² The second has a size standard of \$25 million or less in annual receipts.⁴³

16. The category of “Satellite Telecommunications” “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴⁴ Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year.⁴⁵ Of this total, 533 establishments had annual receipts of under \$10 million or less, and 74 establishments had receipts of \$10 million or more.⁴⁶ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

17. The second category, *i.e.*, “All Other Telecommunications,” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁴⁷ For this category, Census Bureau data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year.⁴⁸ Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more.⁴⁹ Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by our action.

18. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”⁵⁰ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁵¹ Census data for 2007

⁴² 13 C.F.R. § 121.201; NAICS code 517410.

⁴³ 13 C.F.R. § 121.201; NAICS code 517919.

⁴⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2007>.

⁴⁵ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.

⁴⁶ *See id.*

⁴⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

⁴⁸ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

⁴⁹ *See id.*

⁵⁰ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁵¹ *See id.*

shows that there were 31,996 establishments that operated that year.⁵² Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁵³ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

19. *Home Satellite Dish (“HSD”) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of “Wired Telecommunications Carriers.”⁵⁴ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁵⁵ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁵⁶ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁵⁷ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

20. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁵⁸ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁵⁹ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁶⁰

⁵² http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁵³ *See id.*

⁵⁴ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁵⁵ *See id.*

⁵⁶ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁵⁷ *See id.*

⁵⁸ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995).

⁵⁹ 47 C.F.R. § 21.961(b)(1).

⁶⁰ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1,500 or fewer employees.

After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁶¹ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁶² Auction 86 concluded in 2009 with the sale of 61 licenses.⁶³ Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

21. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, "Wired Telecommunications Carriers" have been defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."⁶⁴ Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁶⁵ For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees.⁶⁶ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁶⁷ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁶⁸ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁶⁹

⁶¹ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁶² *Id.* at 8296.

⁶³ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁶⁴ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁶⁵ *Id.*

⁶⁶ *See id.*

⁶⁷ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁶⁸ *See id.*

⁶⁹ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁷⁰

22. *Fixed Microwave Services.* Microwave services include common carrier,⁷¹ private-operational fixed,⁷² and broadcast auxiliary radio services.⁷³ They also include the Local Multipoint Distribution Service (LMDS),⁷⁴ the Digital Electronic Message Service (DEMS),⁷⁵ and the 24 GHz Service,⁷⁶ where licensees can choose between common carrier and non-common carrier status.⁷⁷ At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons.⁷⁸ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁷⁹ For the category of “Wireless Telecommunications Carriers (except Satellite),”⁸⁰ Census data for 2007 show that there were 11,163 firms that operated for the entire year.⁸¹ Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more.⁸² Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

⁷⁰ The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁷¹ See 47 C.F.R. Part 101, Subparts C and I.

⁷² See 47 C.F.R. Part 101, Subparts C and H.

⁷³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁷⁴ See 47 C.F.R. Part 101, Subpart L.

⁷⁵ See 47 C.F.R. Part 101, Subpart G.

⁷⁶ See *id.*

⁷⁷ See 47 C.F.R. §§ 101.533, 101.1017.

⁷⁸ 13 C.F.R. § 121.201; 2007 NAICS code 517210.

⁷⁹ See *id.* The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁸⁰ 13 C.F.R. § 121.201; NAICS code 517210.

⁸¹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table. Available Census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁸² See *id.*

23. *Open Video Systems.* The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁸³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁸⁴ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”⁸⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁸⁶ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁸⁷ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁸⁸ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁸⁹ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁹⁰ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

24. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.”⁹¹ The SBA has developed a small business size standard for this category, which is: all such firms having \$15 million dollars or less in annual revenues.⁹² To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year.⁹³ Of that number, 462 operated with annual revenues of \$9,999,999 million dollars or less,⁹⁴ and 197 operated with annual revenues of 10

⁸³ 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

⁸⁴ See 47 U.S.C. § 573.

⁸⁵ U.S. Census Bureau, 2007 NAICS Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁶ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁸⁷ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁸⁸ See *id.*

⁸⁹ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

⁹⁰ See *13th Annual Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁹¹ U.S. Census Bureau, 2007 NAICS Definitions, “515210 Cable and Other Subscription Programming,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁹² 13 C.F.R. § 121.201; 2007 NAICS code 515210.

⁹³ See

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.

⁹⁴ *Id.*

million or more.⁹⁵ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

25. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁹⁶ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.⁹⁷ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

26. *Incumbent Local Exchange Carriers (“LECs”).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category “Wired Telecommunications Carriers.” Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹⁸ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁹⁹ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.¹⁰⁰ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

27. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category “Wired Telecommunications Carriers.” Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁰¹ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁰² Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.¹⁰³ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities.

⁹⁵ *Id.*

⁹⁶ 15 U.S.C. § 632.

⁹⁷ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

⁹⁸ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁹⁹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

¹⁰⁰ *See id.*

¹⁰¹ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

¹⁰² http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

¹⁰³ *See id.*

28. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.”¹⁰⁴ We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues.¹⁰⁵ To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year.¹⁰⁶ Of these, 8,995 had annual receipts of \$24,999,999 or less, and 100 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more.¹⁰⁷ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

29. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.”¹⁰⁸ We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues.¹⁰⁹ To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year.¹¹⁰ Of these, 434 had annual receipts of \$24,999,999 or less, and 16 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more.¹¹¹ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

30. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile

¹⁰⁴ U.S. Census Bureau, 2007 NAICS Definitions, “512110 Motion Picture and Video Production,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=512110&search=2007>.

¹⁰⁵ 13 C.F.R. § 121.201; 2007 NAICS code 512110.

¹⁰⁶ See <http://www.census.gov/econ/industry/ec07/a51211.htm> (Subject Series: Establishment and Firm Size (national) – Table 4: Revenue Size of Firms for the U.S).

¹⁰⁷ See *id.*

¹⁰⁸ See U.S. Census Bureau, 2007 NAICS Definitions, “512120 Motion Picture and Video Distribution,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=512120&search=2007>.

¹⁰⁹ 13 C.F.R. § 121.201; 2007 NAICS code 512120.

¹¹⁰ See <http://www.census.gov/econ/industry/ec07/a51212.htm> (Subject Series: Establishment and Firm Size (national) – Table 4: Revenue Size of Firms for the U.S).

¹¹¹ See *id.*

communications equipment, and radio and television studio and broadcasting equipment.”¹¹² The SBA has developed a small business size standard for “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year.¹¹³ Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees.¹¹⁴ Thus, under that size standard, the majority of establishments can be considered small.

31. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.¹¹⁵ Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year.¹¹⁶ Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees.¹¹⁷ Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. Certain rule changes discussed in the *Report and Order* would affect reporting, recordkeeping, or other compliance requirements. In general, the *Report and Order* satisfies the requirements of Section 202(a) of the CVAA with regard to making emergency information accessible to persons who are blind or visually impaired by mandating the use of a secondary audio stream to provide the emergency information aurally and concurrently with the emergency information being conveyed visually during non-newscast programming.¹¹⁸ The *Report and Order* also imposes certain apparatus requirements for emergency information and video description.¹¹⁹

33. With regard to the emergency information requirements, there are certain provisions that would require covered entities to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* provides that parties may petition for waiver of these requirements for good cause pursuant to Section 1.3 of the Commission’s rules.¹²⁰ DBS operators may petition for a waiver of the emergency information requirements pursuant to Section 1.3 of the Commission’s rules if

¹¹² See 13 C.F.R § 121.201; U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2007>.

¹¹³ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table.

¹¹⁴ See *id.*

¹¹⁵ See 13 C.F.R § 121.201; U.S. Census Bureau, 2007 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334310&search=2007>.

¹¹⁶ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table.

¹¹⁷ See *id.*

¹¹⁸ *Report and Order* Section III.B.1.

¹¹⁹ *Id.* Section IV.A.

¹²⁰ *Id.* Section III.B.1.

they have insufficient spot beam capacity.¹²¹ The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information rules.¹²²

34. With regard to the apparatus requirements, there are certain provisions that would require covered entities to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* permits parties to raise technical infeasibility as a defense to a complaint or, alternatively, to file a request for a ruling under Section 1.41 of the Commission's rules before manufacturing or importing the product.¹²³ Similarly, the *Report and Order* permits parties to raise achievability as a defense to a complaint alleging a violation of Section 203, or to seek a determination of achievability from the Commission before manufacturing or importing the apparatus.¹²⁴ Pursuant to the *Report and Order*, a party may request a Commission determination of whether its apparatus is an exempt display-only video monitor, may request a waiver of the requirements for mobile digital television ("mobile DTV"), and may prospectively request a purpose-based waiver, which will be addressed on a case-by-case basis.¹²⁵ Further, a covered entity that seeks to use an "alternate means" to comply with the apparatus requirements may file a request pursuant to Section 1.41 of the Commission's rules for a determination that the proposed alternate means satisfies the statutory requirements.¹²⁶ The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information and video description apparatus rules.¹²⁷

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹²⁸ The *NPRM* invited comment on issues that had the potential to have significant impact on some small entities.¹²⁹

36. These rules in certain instances may have a significant economic impact on some small entities. Although alternatives to minimize economic impact have been considered, we emphasize that our action is governed by the congressional mandate contained in Sections 202(a) and 203 of the CVAA. Specifically, the *Report and Order* declines to adopt alternative methods to make televised emergency information accessible to blind and visually impaired persons given the overwhelming support in the record for use of a secondary audio stream to achieve accessibility.¹³⁰ For example, the Commission

¹²¹ *Id.*

¹²² *Id.* Section III.E.

¹²³ *Id.* Section IV.B.2.

¹²⁴ *Id.*

¹²⁵ *Id.* Sections IV.B.2, IV.B.3.

¹²⁶ *Id.* Section IV.C.

¹²⁷ *Id.* Section IV.E.

¹²⁸ 5 U.S.C. § 603(c)(1)-(c)(4).

¹²⁹ See *NPRM*, 27 FCC Rcd at 14756, Appendix B, ¶ 1.

¹³⁰ *Report and Order* Section III.B.1.

considered alternatives that were considered but not recommended by the Video Programming Accessibility Advisory Committee (“VPAAC”),¹³¹ such as: (1) including a shortened audio version of the textual emergency information on the main program audio; or (2) broadcasting a five to ten second audio message on the main program audio after the three aural tones to inform individuals who are blind or visually impaired of a means by which they can access the emergency information, such as a telephone number or radio station.¹³² According to the VPAAC, these alternatives have disadvantages, including interruption to the main program audio that could be disruptive to viewers and the need for sufficient resources to create and manage the brief audio messages, and no commenters supported these proposals.¹³³ The Commission also considered other alternatives that were considered but not recommended by the VPAAC such as “dipping” or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location.¹³⁴ The VPAAC determined that these alternatives either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems, and no commenters supported these proposals.¹³⁵ Given the importance of providing accessible emergency information to blind and visually impaired consumers, the *Report and Order* also declines to create an exception from the requirements of the revised emergency information rule based on technical capability, but parties, including small entities, may petition for a waiver for good cause pursuant to Section 1.3 of the Commission’s rules.¹³⁶ We note that many covered entities, including small entities, already provide or have the capability to pass through secondary audio streams, such that any economic impact will be minimized.

37. With regard to apparatus requirements, the *Report and Order* adopts procedures enabling the Commission to grant exemptions to the rules pursuant to Section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense) or is not technically feasible.¹³⁷ This exemption process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. This will reduce the costs of compliance for these entities. As an additional means of reducing the costs of compliance, the *Report and Order* provides that parties may use alternate means of compliance to the rules adopted pursuant to Section 203 of the CVAA.¹³⁸ Under this approach, the Commission will permit an entity that seeks to use an “alternate means” to comply with the apparatus requirements to file a request pursuant to Section 1.41 of the Commission’s rules for a determination that the proposed alternate means satisfies the statutory

¹³¹ The CVAA directed the Chairman of the Commission to establish an advisory committee known as the VPAAC, which was directed to develop a report that identifies performance objectives and recommends technical standards and other necessary regulations for the provision of emergency information and video description. Pub. L. No. 111-260, § 201(a).

¹³² *Report and Order* Section III.B.1.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* Section IV.B.2.

¹³⁸ *Id.* Section IV.C.

requirements, and the Commission will consider such requests on a case-by-case basis.¹³⁹ Individual entities, including smaller entities, may benefit from these provisions.

38. Overall, we believe we have appropriately considered both the interests of individuals who are blind and visually impaired and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to "update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming."¹⁴⁰

G. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

39. None.

H. Report to Congress

40. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁴¹ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁴²

¹³⁹ *Id.*

¹⁴⁰ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

¹⁴¹ *See* 5 U.S.C. § 801(a)(1)(A).

¹⁴² *See id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis for the *Further Notice*

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (“*Further Notice*”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the item. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *Further Notice*⁴:

- Explores whether a multichannel video programming distributor (“MVPD”) service is covered by the emergency information rules adopted herein when an MVPD, as defined in the Commission’s rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams; and
- Explores whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.

B. Legal Basis

3. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617.

C. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

4. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules if adopted.⁵ The RFA

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See *Further Notice*.

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).⁸

5. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of “Wired Telecommunications Carriers,” which is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁰ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹¹ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.¹² Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

6. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.¹³ Industry data indicate that all but ten cable operators nationwide are small under this size standard.¹⁴ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁵ Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an

(Continued from previous page) _____

⁵ 5 U.S.C. § 603(b)(3).

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers.

¹⁰ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

¹¹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

¹² *See id.*

¹³ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹⁴ *See* BROADCASTING & CABLE YEARBOOK 2010 at C-2 (2009) (data current as of Dec. 2008).

¹⁵ 47 C.F.R. § 76.901(c).

additional 258 systems have 10,000-19,999 subscribers.¹⁶ Thus, under this standard, most cable systems are small.

7. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁷ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁸ Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard.¹⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁰ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

8. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”²¹ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.²² The Commission has estimated the number of licensed commercial television stations to be 1,387.²³ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.²⁴ We therefore estimate that the majority of commercial television broadcasters are small entities.

9. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁵ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on

¹⁶ See TELEVISION & CABLE FACTBOOK 2009 at F-2 (2009) (data current as of Oct. 2008). The data do not include 957 systems for which classifying data were not available.

¹⁷ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

¹⁸ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

¹⁹ See BROADCASTING & CABLE YEARBOOK 2010 at C-2 (2009) (data current as of Dec. 2008).

²⁰ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.901(f).

²¹ U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2007>.

²² 13 C.F.R. § 121.201; NAICS code 515120.

²³ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

²⁴ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

²⁵ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 21.103(a)(1).

which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

10. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.²⁶ These stations are non-profit, and therefore considered to be small entities.²⁷

11. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”²⁸ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²⁹ Census data for 2007 shows that there were 31,996 establishments that operated that year.³⁰ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.³¹ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (“EchoStar”) (marketed as the DISH Network).³² Each currently offers subscription services. DIRECTV³³ and EchoStar³⁴ each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

12. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average

²⁶ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012, http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

²⁷ See generally 5 U.S.C. §§ 601(4), (6).

²⁸ See 13 C.F.R. § 121.201; 2007 NAICS code 517110. The 2007 NAICS definition of the category of “Wired Telecommunications Carriers” is in paragraph 5, above.

²⁹ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

³⁰ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

³¹ See *id.*

³² See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 580, ¶ 74 (2009) (“13th Annual Report”). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (“Dominion”) (marketed as Sky Angel). See Public Notice, “Policy Branch Information; Actions Taken,” Report No. SAT-00474, 22 FCC Rcd 17776 (IB 2007).

³³ As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. See *13th Annual Report*, 24 FCC Rcd at 687, Table B-3.

³⁴ As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. See *13th Annual Report*, 24 FCC Rcd at 687, Table B-3. As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving “Sky Angel” service from DISH Network. See *id.* at 581, ¶ 76.

annual receipts, under SBA rules.³⁵ The second has a size standard of \$25 million or less in annual receipts.³⁶

13. The category of “Satellite Telecommunications” “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”³⁷ Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year.³⁸ Of this total, 533 establishments had annual receipts of under \$10 million or less, and 74 establishments had receipts of \$10 million or more.³⁹ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

14. The second category, *i.e.*, “All Other Telecommunications,” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁴⁰ For this category, Census Bureau data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year.⁴¹ Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more.⁴² Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by our action.

15. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”⁴³ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁴⁴ Census data for 2007

³⁵ 13 C.F.R. § 121.201; NAICS code 517410.

³⁶ 13 C.F.R. § 121.201; NAICS code 517919.

³⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2007>.

³⁸ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.

³⁹ *See id.*

⁴⁰ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

⁴¹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

⁴² *See id.*

⁴³ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁴⁴ *See id.*

shows that there were 31,996 establishments that operated that year.⁴⁵ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁴⁶ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

16. *Home Satellite Dish (“HSD”) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of “Wired Telecommunications Carriers.”⁴⁷ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁴⁸ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁴⁹ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁵⁰ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

17. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁵¹ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁵² The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁵³

⁴⁵ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁴⁶ *See id.*

⁴⁷ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁴⁸ *See id.*

⁴⁹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁵⁰ *See id.*

⁵¹ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995).

⁵² 47 C.F.R. § 21.961(b)(1).

⁵³ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1,500 or fewer employees.

After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁵⁴ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁵⁵ Auction 86 concluded in 2009 with the sale of 61 licenses.⁵⁶ Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

18. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, "Wired Telecommunications Carriers" have been defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."⁵⁷ Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵⁸ For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees.⁵⁹ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁶⁰ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁶¹ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁶²

⁵⁴ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁵⁵ *Id.* at 8296.

⁵⁶ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁵⁷ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁵⁸ *Id.*

⁵⁹ *See id.*

⁶⁰ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁶¹ *See id.*

⁶² <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁶³

19. *Fixed Microwave Services.* Microwave services include common carrier,⁶⁴ private-operational fixed,⁶⁵ and broadcast auxiliary radio services.⁶⁶ They also include the Local Multipoint Distribution Service (LMDS),⁶⁷ the Digital Electronic Message Service (DEMS),⁶⁸ and the 24 GHz Service,⁶⁹ where licensees can choose between common carrier and non-common carrier status.⁷⁰ At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons.⁷¹ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁷² For the category of “Wireless Telecommunications Carriers (except Satellite),”⁷³ Census data for 2007 show that there were 11,163 firms that operated for the entire year.⁷⁴ Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more.⁷⁵ Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

⁶³ The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁶⁴ See 47 C.F.R. Part 101, Subparts C and I.

⁶⁵ See 47 C.F.R. Part 101, Subparts C and H.

⁶⁶ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁶⁷ See 47 C.F.R. Part 101, Subpart L.

⁶⁸ See 47 C.F.R. Part 101, Subpart G.

⁶⁹ See *id.*

⁷⁰ See 47 C.F.R. §§ 101.533, 101.1017.

⁷¹ 13 C.F.R. § 121.201; 2007 NAICS code 517210.

⁷² See *id.* The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁷³ 13 C.F.R. § 121.201; NAICS code 517210.

⁷⁴ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table. Available Census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁷⁵ See *id.*

20. *Open Video Systems.* The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁷⁶ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁷⁷ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”⁷⁸ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁷⁹ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁸⁰ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁸¹ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁸² Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁸³ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

21. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.”⁸⁴ The SBA has developed a small business size standard for this category, which is: all such firms having \$15 million dollars or less in annual revenues.⁸⁵ To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year.⁸⁶ Of that number, 462 operated with annual revenues of \$9,999,999 million dollars or less,⁸⁷ and 197 operated with annual revenues of 10

⁷⁶ 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

⁷⁷ See 47 U.S.C. § 573.

⁷⁸ U.S. Census Bureau, 2007 NAICS Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁹ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁸⁰ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁸¹ See *id.*

⁸² A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

⁸³ See *13th Annual Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁸⁴ U.S. Census Bureau, 2007 NAICS Definitions, “515210 Cable and Other Subscription Programming,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁵ 13 C.F.R. § 121.201; 2007 NAICS code 515210.

⁸⁶ See

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.

⁸⁷ *Id.*

million or more.⁸⁸ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

22. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁸⁹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.⁹⁰ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

23. *Incumbent Local Exchange Carriers (“LECs”).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category “Wired Telecommunications Carriers.” Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹¹ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁹² Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁹³ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

24. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category “Wired Telecommunications Carriers.” Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁹⁵ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁹⁶ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities.

⁸⁸ *Id.*

⁸⁹ 15 U.S.C. § 632.

⁹⁰ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

⁹¹ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁹² http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁹³ See *id.*

⁹⁴ 13 C.F.R. § 121.201; 2007 NAICS code 517110.

⁹⁵ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁹⁶ See *id.*

25. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.”⁹⁷ We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues.⁹⁸ To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year.⁹⁹ Of these, 8,995 had annual receipts of \$24,999,999 or less, and 100 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more.¹⁰⁰ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

26. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.”¹⁰¹ We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues.¹⁰² To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year.¹⁰³ Of these, 434 had annual receipts of \$24,999,999 or less, and 16 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more.¹⁰⁴ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile

⁹⁷ U.S. Census Bureau, 2007 NAICS Definitions, “512110 Motion Picture and Video Production,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=512110&search=2007>.

⁹⁸ 13 C.F.R. § 121.201; 2007 NAICS code 512110.

⁹⁹ See <http://www.census.gov/econ/industry/ec07/a51211.htm> (Subject Series: Establishment and Firm Size (national) – Table 4: Revenue Size of Firms for the U.S.).

¹⁰⁰ See *id.*

¹⁰¹ See U.S. Census Bureau, 2007 NAICS Definitions, “512120 Motion Picture and Video Distribution,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=512120&search=2007>.

¹⁰² 13 C.F.R. § 121.201; 2007 NAICS code 512120.

¹⁰³ See <http://www.census.gov/econ/industry/ec07/a51212.htm> (Subject Series: Establishment and Firm Size (national) – Table 4: Revenue Size of Firms for the U.S.).

¹⁰⁴ See *id.*

communications equipment, and radio and television studio and broadcasting equipment.”¹⁰⁵ The SBA has developed a small business size standard for “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year.¹⁰⁶ Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees.¹⁰⁷ Thus, under that size standard, the majority of establishments can be considered small.

28. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.¹⁰⁸ Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year.¹⁰⁹ Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees.¹¹⁰ Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

29. Certain proposals discussed in the *Further Notice* would affect reporting, recordkeeping, or other compliance requirements.

30. The *Further Notice* inquires whether, when an MVPD, as defined in the Commission’s rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices, this service is covered by the emergency information rules adopted in the *Report and Order*.¹¹¹ An MVPD may seek a waiver of the emergency information requirements for good cause pursuant to Section 1.3 of the Commission’s rules.¹¹² An MVPD may also be required to respond to complaints alleging a violation of the emergency information rules and the emergency information and video description apparatus rules.¹¹³

31. The *Further Notice* also considers whether covered entities should provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.¹¹⁴ If the Commission adopts rules requiring the

¹⁰⁵ See 13 C.F.R § 121.201; U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2007>.

¹⁰⁶ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table.

¹⁰⁷ See *id.*

¹⁰⁸ See 13 C.F.R § 121.201; U.S. Census Bureau, 2007 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334310&search=2007>.

¹⁰⁹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table.

¹¹⁰ See *id.*

¹¹¹ See *Further Notice*.

¹¹² See *Report and Order* Section III.B.1.

¹¹³ *Id.* Sections III.E, IV.E.

¹¹⁴ See *Further Notice*.

provision of such customer support services, covered entities may be required to keep records. For example, covered entities may be required to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues.¹¹⁵

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹¹⁶

33. First, the *Further Notice* seeks comment on whether an MVPD service is covered by the emergency information rules adopted in the *Report and Order* when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices.¹¹⁷ The *Further Notice* considers whether there are technological hurdles, if any, that will prevent or impede the delivery of the secondary audio service on mobile devices and personal computers, and whether obligations should be shared between MVPDs and apparatus manufacturers.¹¹⁸ These considerations will allow the Commission to consider the impact of the requirements on covered entities, including smaller entities.

34. Second, the *Further Notice* seeks comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices.¹¹⁹ We note that an MVPD is exempt from the pass-through requirement under the video description rules if it does not have the technical capability necessary to pass through the video description.¹²⁰ Thus, this exemption is available to small entities that will face more than minimal costs to comply with the pass-through requirement.

35. Third, the *Further Notice* considers whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams.¹²¹ The *Further Notice* considers the steps broadcasters and manufacturers would need to take to comply with such a requirement, and whether there are any other steps the Commission should take to ensure that the content of the secondary audio stream is

¹¹⁵ *Id.*

¹¹⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

¹¹⁷ *See Further Notice.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11860-62, ¶¶ 23-27 (2011).

¹²¹ *See Further Notice.*

properly tagged.¹²² These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

36. Fourth, the *Further Notice* considers whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.¹²³ The *Further Notice* considers alternatives for the provision of customer support services, including whether such services should consist of a dedicated telephone number, an accessible chat feature on the covered entity's website, or a different means by which regulated entities should provide customer support.¹²⁴ The *Further Notice* also considers whether the Commission should require covered entities to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues, as in the television closed captioning context, or whether it should instead adopt contact information requirements comparable to those applicable to the IP closed captioning rules.¹²⁵ Further, the *Further Notice* considers whether there other ways by which entities subject to the emergency information and apparatus requirements can best provide assistance to consumers who are blind or visually impaired with accessing the secondary audio stream.¹²⁶ These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

37. None.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *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; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43

As we continue to meet our deadlines and objectives in implementing the 21st Century Communications and Video Accessibility Act, I once again applaud the staff of the FCC and our industry counterparts for yet another win.

For far too long, Americans who are blind or visually impaired were at a severe disadvantage when it came to accessing and responding to emergency notifications transmitted over the television airwaves. But because of today's action, those alerts previously delivered in a visual-only configuration will now also be made available in an audio format. Ensuring that the video equipment used by those who are blind and visually impaired is fully capable of transporting timely and important messages is critical, and I'm also extremely pleased that we have completed another significant step in our video description rulemakings.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *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; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43

Today the Commission takes another important step in implementing the groundbreaking Twenty-First Century Communications and Video Accessibility Act of 2010.

When a tornado strikes, a chemical spill happens, or another disaster threatens, broadcasters are often the first to provide critical information to the public. They break into programming to broadcast warnings or run text crawls with important information during television shows. This dedication to their local communities is to be applauded and supported.

But for the more than 21 million Americans who are blind or visually-impaired, access to televised emergency information is frequently curtailed. When the aural tone signifying emergency information is not followed with details accessible to this population, such individuals must go in search of a radio or another alternative to learn about the details of an event. We can and should do better for millions of people with disabilities in this country.

That is why I am pleased to support today's Report and Order and Further Notice of Proposed Rulemaking, which requires that an aural presentation of emergency information that is provided visually in non-newscast programming be made available on a secondary audio stream. Americans who are blind or visually-impaired will be able to get access to and act upon important information without delay. Going forward, as technology advances and consumers access programming in new ways, we should make sure that public safety and access for people with disabilities remain a priority.

As we continue to implement the Twenty-First Century Communications and Video Accessibility Act of 2010, I look forward to working with all stakeholders to expand access to communications technologies and opportunities across the nation. I appreciate the cooperation and hard work of the providers and distributors of video programming and applaud the tireless advocacy of the many champions in the disability community.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *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; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43

It is a Commission priority to make a broad range of information accessible to individuals with disabilities, and emergency information is the most critical because it can make the difference between life and death. The steps we take today to make emergency information more accessible to those who are blind or visually impaired continue our implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010. I am therefore pleased to support this item. Three points, however, deserve further comment.

First, we leave for another day the question of whether to grant waivers to small cable systems that lack the equipment to pass through emergency information on secondary audio streams for analog channels. I hope that the Media Bureau will look favorably upon such waiver requests; otherwise, there is a real risk that many small cable systems will shut down rather than bear the cost of complying with our rules. Such an outcome would be especially unfortunate for those living in rural America, *including* those who are blind or visually impaired.

Second, my vote today should not be interpreted as an endorsement of the scope of the apparatus requirements set forth in our rules. In this item, we interpret Section 303(u)(1) of the Communications Act in the same manner as did the Commission in the *IP Closed Captioning Order*. Such consistency makes sense since the same statutory language should not mean one thing in the closed captioning context and another thing in the emergency information and video description context.¹ That having been said, a petition for reconsideration of the *IP Closed Captioning Order* remains pending at the Commission that addresses whether removable media players are covered by Section 303(u)(1) and whether we should look only to a device's capabilities to determine whether it falls within the scope of that statutory provision.² I believe that petition for reconsideration is the appropriate vehicle for reassessing the scope of the apparatus requirements and, especially since I was not serving at the Commission at the time of the *IP Closed Captioning Order*, I will approach it with an open mind. Additionally, we should rule on that petition sooner rather than later.

Third, I am pleased that the Further Notice of Proposed Rulemaking does not reach any tentative conclusions about how our emergency information rules apply where an MVPD permits subscribers to access linear video programming via devices such as tablets and smartphones. Any such tentative conclusions would have been premature. I look forward to reviewing the record that will be compiled on this difficult issue over the next few months.

¹ *Cf. Clark v. Martinez*, 543 U.S. 371, 378 (2005) (“To give these same words a different meaning for each category would be to invent a statute rather than interpret one.”).

² Petition for Reconsideration of the Consumer Electronics Association, MB Docket No. 11-154 (filed Apr. 30, 2012).