

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

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

SECOND REPORT AND ORDER AND
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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statements.

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I. INTRODUCTION

1. In this *Second Report and Order*, we take additional steps under the authority of Sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)¹ to make emergency information in video programming accessible to individuals who are blind or visually impaired. The Commission adopted rules in 2013 to require that visual emergency information shown during non-newscast television programming, such as in an on-screen crawl, is also available to individuals who are blind or visually impaired through an aural presentation on a secondary audio stream.² In adopting these rules pursuant to Sections 202 and 203 of the CVAA, the Commission recognized the importance of making sure that individuals who are blind or visually impaired are able to hear critical information about emergencies affecting their locality, which can enable them promptly to respond to such emergency situations and to protect their lives and property.

2. First, this *Second Report and Order* concludes that multichannel video programming distributors (“MVPDs”) must pass through a secondary audio stream containing audible emergency information in accordance with Section 79.2 of the Commission’s rules³ when they permit consumers to access linear programming⁴ on tablets, smartphones, laptops, and similar devices over the MVPD’s network⁵ as part of their MVPD services. Increasingly, Americans are utilizing a wide range of devices in addition to the television to view video programming,⁶ and a number of MVPDs now allow customers to

¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); 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).

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*; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107, 11-43, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (“*First Report and Order*”). 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. *Id.* at 4873, n.5.

³ 47 C.F.R. § 79.2.

⁴ The term “linear programming” is generally understood to refer to video programming that is prescheduled by the video programming provider. See *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, 16001, n.26 (2014) (“*MVPD Definition NPRM*”) (using the term “linear programming” “consistent with prior Commission use”) (citing *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, 4308, ¶ 14, n.34 (2010) (“The term ‘linear programming’ is generally understood to refer to video programming that is prescheduled by the programming provider.”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Notice of Inquiry, 29 FCC Rcd 1597, 1603, ¶ 15, n.23 (2014) (“A linear channel is one that distributes programming at a scheduled time. Non-linear programming, such as video-on-demand (“VOD”) and online video content, is available at a time of the viewer’s choosing.”)).

⁵ See *infra* ¶ 9.

⁶ See, e.g., Nielsen, *Shifts in Viewing: The Cross-Platform Report Q2 2014* (Sept. 8, 2014), available at <http://www.nielsen.com/us/en/insights/reports/2014/shifts-in-viewing-the-cross-platform-report-q2-2014.html> (reporting that increased media consumption is driven “[p]rimarily [by] the growth in digital—both on computers and mobile devices” and noting that consumers “increasingly look for [content] on the go and on demand on their mobile devices”). See also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video*

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view linear programming on “second screen” devices using applications or other technologies.⁷ Our rule ensures that individuals who are blind or visually impaired will be provided with accessible emergency information when they are watching linear programming over the MVPD’s network as part of their MVPD services, regardless of whether they are viewing the programming on their television or on their tablet, smartphone, or similar device.

3. Second, this *Second Report and Order* requires manufacturers of apparatus subject to Section 79.105 of the Commission’s rules⁸ to provide a mechanism that is simple and easy to use for activating the secondary audio stream to access audible emergency information. Individuals who are blind or visually impaired should not have to navigate through multiple levels of menus or take other time-consuming actions to activate the secondary audio stream when they hear the aural tone signaling that emergency information is being provided visually on the screen. In emergency situations, every second counts. Thus, we believe that in order for emergency information to be made fully accessible to individuals who are blind or visually impaired in accordance with Section 203 of the CVAA, manufacturers of covered apparatus must ensure that such individuals have a simple, easy to use mechanism to activate the secondary audio stream in order to hear emergency information.

4. In the *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”), we seek comment on three issues: (i) whether we should adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether we should reconsider the Commission’s requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream; and (iii) whether we should require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

II. BACKGROUND

5. The CVAA was enacted on October 8, 2010 with the purpose of ensuring that individuals with disabilities are able to fully utilize modern communications services and equipment and to better access video programming.⁹ Sections 202 and 203 of the CVAA address, in part, the accessibility of emergency information for individuals who are blind or visually impaired.¹⁰ Specifically, Section 202 of

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Programming, MB Docket No. 14-16, Sixteenth Report, FCC 15-41, ¶ 336 (rel. Apr. 2, 2015) (“*16th Video Competition Report*”) (“IP video distribution opportunities for MVPDs and [online video distributors] continue to expand through portable media devices.”).

⁷ For example, Cablevision, Charter, Comcast, Cox, and Time Warner Cable currently offer applications that allow their subscribers to view linear programming on mobile and other devices. See *infra* note 41 and accompanying text.

⁸ 47 C.F.R. § 79.105. See *infra* note 75.

⁹ See 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).

¹⁰ Pursuant to Section 201 of the CVAA, the Chairman of the Commission established an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”), comprised of representatives from industry and consumer groups, which submitted its statutorily mandated report addressing accessible emergency information to the Commission on April 9, 2012. 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>; Pub. L. No. 111-260, § 201(e)(2). See also 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). The portion of the report that

(continued....)

the CVAA directs the Commission to (i) “identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations¹¹) in a manner accessible to individuals who are blind or visually impaired,”¹² and (ii) “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 Regulations¹³) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.”¹⁴ Section 203 of the CVAA directs the Commission to prescribe rules requiring certain apparatus on which consumers receive or play back video programming, such as televisions, set-top boxes, DVD and Blu-ray players, 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 emergency information and video description.¹⁵

6. The Commission adopted the *First Report and Order* on April 9, 2013.¹⁶ The record compiled in the proceeding reflected consensus among industry and consumer groups supporting use of a (Continued from previous page)

addresses 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*”).

¹¹ “Emergency information” is defined in Section 79.2 of the Commission’s rules as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.” 47 C.F.R. § 79.2(a)(2). *See also First Report and Order*, 28 FCC Rcd at 4895-97, ¶¶ 29-31. As in the *First Report and Order*, we note that the emergency information covered by this proceeding does not include emergency alerts delivered through the Emergency Alert System (EAS), the accessibility requirements for which are contained in Part 11 of the Commission’s rules. *See* 47 C.F.R. § 11.1 *et seq.*; *First Report and Order*, 28 FCC Rcd at 4878-79, ¶ 9. However, to the extent a broadcaster or other covered entity uses the information provided through EAS or any other source (*e.g.*, 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. *See First Report and Order*, 28 FCC Rcd at 4879, ¶ 9.

¹² 47 U.S.C. § 613(g)(1).

¹³ Section 79.1 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.” 47 C.F.R. § 79.1(a)(12). 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.” *Id.* § 79.1(a)(11).

¹⁴ 47 U.S.C. § 613(g)(2).

¹⁵ *Id.* §§ 303(u)(1), 303(z)(1).

¹⁶ *See generally First Report and Order. See also 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*”). The *First Report and Order* was published in the *Federal Register* on May 24, 2013. Federal Communications Commission, 47 CFR Part 79, Accessible Emergency Information; Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Final Rule, 78 FR 31770 (May 24, 2013); Federal Communications Commission, 47 CFR Part 79, 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, Proposed Rule, 78 FR 31800 (May 24, 2013).

secondary audio stream to provide emergency information in a manner accessible to individuals who are blind or visually impaired, which was recommended by the VPAAC.¹⁷ Thus, to implement the emergency information requirements in Section 202, the *First Report and Order* adopted rules requiring that video programming providers (including program owners) and video programming distributors use a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts.¹⁸ Pursuant to Section 203, the *First Report and Order* also adopted rules applicable to manufacturers that require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make available the secondary audio stream.¹⁹

7. In the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) that accompanied the *First Report and Order*, the Commission sought comment on whether MVPDs are covered by the emergency information rules when they permit their subscribers to access linear programming via mobile or other devices.²⁰ In a separate *Further Notice of Proposed Rulemaking* issued in conjunction with the Commission’s *User Interfaces Order*²¹ (“*User Interfaces Further Notice*”), also under MB Docket No. 12-107, the Commission sought comment on whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream used for audible emergency information by a simple and straightforward mechanism, such as a mechanism reasonably comparable to a button, key, or icon.²² In particular, the Commission sought comment on whether Section 303(u)(1)(C) of the Communications Act of 1934, as amended (the “Act”), as added by Section 203 of the CVAA, which requires that covered apparatus have the capability to make available emergency information in a manner that is accessible to individuals who are blind or visually impaired, gives the Commission authority to adopt such a requirement.²³ Consumer and academic commenters, including the American Foundation for the Blind (“AFB”), the American Council of the Blind (“ACB”), and the Rehabilitation Engineering Research Center for Wireless Technologies (“Wireless RERC”), support such a requirement, while industry commenters oppose it.²⁴

¹⁷ See *First Report and Order*, 28 FCC Rcd at 4881-82, ¶ 13; *VPAAC Second Report: Access to Emergency Information* at 7, 10-11.

¹⁸ See *First Report and Order*, 28 FCC Rcd at 4881, ¶ 12; 47 C.F.R. § 79.2(b)(2)(ii). The Commission did not revise the existing requirement applicable to emergency information provided visually during newscasts, explaining that the rule already requires such information to be made accessible to individuals who are blind or visually impaired through aural presentation in the main program audio. *First Report and Order*, 28 FCC Rcd at 4879-80, ¶ 10. See 47 C.F.R. § 79.2(b)(2)(i).

¹⁹ See *First Report and Order*, 28 FCC Rcd at 4907, 4909, ¶¶ 49, 52; 47 C.F.R. §§ 79.105-79.106.

²⁰ *First Report and Order*, 28 FCC Rcd at 4926-27, ¶¶ 80-82. The Commission also sought comment on the following issues in the *Further Notice*: (i) whether MVPDs must pass through video description on the secondary audio stream when they permit their subscribers to access linear programming via mobile or other devices; (ii) whether the Commission should mandate that the secondary audio stream include a particular tag (e.g., a “visually impaired” (“VI”) tag); and (iii) whether the Commission should 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. See *id.* at 4927-29, ¶¶ 83-86. The Commission is continuing to consider these issues.

²¹ See *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (“*User Interfaces Order*”).

²² See *id.* at 17417-18, ¶¶ 145-47.

²³ See *id.* at 17418, ¶ 146; 47 U.S.C. § 303(u)(1)(C); Pub. L. No. 111-260, § 203.

²⁴ See *infra* Section III.B.1.

8. To further implement Sections 202 and 203 of the CVAA, we adopt the rules discussed below. Consistent with the intent of the CVAA, we must ensure that individuals with disabilities are not left behind as new technologies and platforms for viewing video programming are developed, and we are mindful of this as we revise our rules promoting the accessibility of emergency information.

III. DISCUSSION

A. Accessible Emergency Information Requirements for Linear Programming on Mobile and Other Devices

9. Given the increasing number of ways in which consumers are accessing linear video programming from MVPDs, we believe that it is important to further define MVPD responsibilities with regard to the secondary audio stream for emergency information on mobile and other devices. Specifically, we conclude that MVPDs must pass through a secondary audio stream containing audible emergency information when they permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices²⁵ over the MVPD's network as part of their MVPD services.²⁶ For our purposes here, linear video programming is accessed "over the MVPD's network"²⁷ if it can only be received via a connection provided by the MVPD²⁸ using an MVPD-provided application or plug-in.²⁹

1. Legal and Policy Analysis

10. In the *Further Notice*, we inquired whether an MVPD is acting as a "video programming distributor" that provides "video programming" covered by the emergency information rules adopted in the *First Report and Order* when it permits its subscribers to access linear programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices.³⁰ We also sought comment on whether, under this approach, an MVPD should be required to ensure that any application or plug-in that it provides to the consumer to access such programming is capable of making emergency information audible on a secondary audio stream.³¹

11. We conclude that the accessible emergency information requirements adopted in the *First Report and Order* should apply to linear video programming distributed by MVPDs to their subscribers over the MVPD's network, regardless of the device on which such programming is viewed. In the *First Report and Order*, the Commission determined that the accessible emergency information requirements adopted therein apply to video programming subject to Section 79.2 that is provided by a covered entity,

²⁵ In addition to tablets, smartphones, and laptops, the phrase "similar devices" includes other devices on which subscribers can view MVPD-provided linear programming over the MVPD's network, such as personal computers, game consoles, and Roku devices.

²⁶ At this time, this does not include over-the-top ("OTT") services, which are at issue in a separate proceeding that considers whether to interpret the term MVPD to include "services that make available for purchase, by subscribers or customers, multiple linear streams of video programming, regardless of the technology used to distribute the programming." *MVPD Definition NPRM*, 29 FCC Rcd at 15996, ¶ 1. See *infra* ¶ 15. As in the *MVPD Definition NPRM*, we use the term OTT to refer to linear video services that travel over the Internet and that MVPDs do not treat as managed video services on any MVPD system. *MVPD Definition NPRM*, 29 FCC Rcd at 16026, n.199.

²⁷ This definition applies when we use the phrase "over the MVPD's network" throughout the item.

²⁸ Video is "received via a connection provided by the MVPD" if it is received either via an MVPD's broadband connection or if it is video that comes over a coaxial or satellite connection that is converted to IP in the home gateway.

²⁹ This is distinguishable from video programming provided over the Internet, which can be accessed by an MVPD subscriber when using either an MVPD-provided connection, or a third-party Internet service provider or broadband connection. For example, a customer that uses a tablet connected to a bookstore's Wi-Fi to access video programming would not be accessing the programming "over the MVPD's network."

³⁰ *First Report and Order*, 28 FCC Rcd at 4926, ¶ 80.

³¹ *Id.*

i.e., video programming provided by television broadcast stations licensed by the Commission, 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.³² As the National Cable & Telecommunications Association (“NCTA”) observes, MVPDs are expressly included within the regulatory definition of a “video programming distributor.”³³ Further, linear programming distributed by an MVPD to a subscriber over the MVPD’s network is “video programming” subject to Section 79.2 of the rules. In other words, it is “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.”³⁴ Accordingly, MVPDs must comply with the accessible emergency information requirements when they permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD’s network as part of their MVPD services.³⁵ Further, Section 202 of the CVAA gives the Commission discretion in how it implements the requirement that video programming distributors, including MVPDs, “convey [] emergency information in a manner accessible to individuals who are blind or visually impaired.”³⁶ Thus, applying the emergency information rules when MVPDs permit subscribers to access linear programming on mobile and other devices over the MVPD’s network adheres to the statutory directive to ensure that emergency information is conveyed in an accessible manner to individuals with visual disabilities.

12. NCTA, AT&T Services, Inc. (“AT&T”), and the Wireless RERC argue that MVPDs should be covered by the emergency information rules in Section 79.2 when they provide linear programming that contains emergency information for viewing on mobile and other devices within the home. NCTA contends that “a cable operator delivering linear broadcast stations containing emergency information (or any other linear video programming service that might provide an aural version of emergency information covered by the rules) within a subscriber’s home would be a ‘video programming distributor’ for . . . purposes [of the rules], even if the linear service is received through use of an operator-supplied app on a device owned by a consumer.”³⁷ According to NCTA, “cable operators would not object to applying the emergency information rules in these circumstances.”³⁸ Likewise, AT&T states that “when an MVPD is allowing its subscribers to access video programming that is distributed to the home via the MVPD’s network, the MVPD is subject to the Commission’s emergency information rules,

³² *Id.* at 4876-77, ¶ 7; 47 C.F.R. §§ 79.1(a)(10)-(11).

³³ See Comments of the National Cable & Telecommunications Association, MB Docket Nos. 12-107, 11-43, at 3 (“NCTA Comments”); 47 C.F.R. § 79.1(a)(11). See also *First Report and Order*, 28 FCC Rcd at 4897-98, ¶ 33.

³⁴ See NCTA Comments at 3; 47 C.F.R. § 79.1(a)(10).

³⁵ Given that we apply the rules only when MVPDs permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD’s network as part of their MVPD services, and not to OTT services at this time, we need not address the issues raised by industry commenters with regard to whether the Commission has authority under the CVAA to extend the accessible emergency information requirements in Section 79.2 to all linear programming delivered over the Internet or via Internet protocol (“IP”). See Comments of AT&T Services, Inc., MB Docket Nos. 12-107, 11-43, at 3 (“AT&T Comments”); Comments of DIRECTV, LLC, MB Docket Nos. 12-107, 11-43, at 5-6 (“DIRECTV Comments”); Comments of the Consumer Electronics Association, MB Docket Nos. 12-107, 11-43, at 6 (“CEA Comments”); Comments of the Telecommunications Industry Association, MB Docket Nos. 12-107, 11-43, at 3-4 (“TIA Comments”); Reply Comments of the Entertainment Software Association, MB Docket Nos. 12-107, 11-43, at 3 (“ESA Reply”); Reply Comments of the Information Technology Industry Council, MB Docket Nos. 12-107, 11-43, at 3-4 (“ITIC Reply”). See also Reply Comments of the National Association of Broadcasters, MB Docket Nos. 12-107, 11-43, at 2 (“NAB Reply”).

³⁶ 47 U.S.C. § 613(g)(2).

³⁷ NCTA Comments at 3.

³⁸ *Id.*

regardless of the devices that are accessing the video programming.”³⁹ The Wireless RERC agrees with AT&T’s position.⁴⁰

13. We believe that requiring MVPDs to pass through a secondary audio stream with audible emergency information in these circumstances will further the goals of the CVAA by helping to ensure that emergency information is made accessible to individuals who are blind or visually impaired when they watch linear video programming provided by their MVPD over the MVPD’s network, regardless of the device on which they are viewing the programming. The number of ways in which consumers are able to access linear programming from their MVPDs is growing. As NCTA points out, “[c]able operators, as part of their existing services, increasingly are providing applications (‘apps’) or other technologies that enable their subscribers to view linear programming within the home over the cable operator’s network.”⁴¹ Consumer advocates emphasize the importance of making sure that the emergency information rules keep pace with such trends and urge the Commission to apply the emergency information rules to mobile and other devices.⁴² In addition, the Wireless RERC explains that individuals who are blind or visually impaired may not draw a distinction between regular television broadcasts and linear programming on mobile and other devices offered as part of an MVPD’s services and, therefore, they argue that the emergency information rules should apply equally to the latter.⁴³ We concur. Consumers who choose to watch linear programming offered by an MVPD on a mobile device over the MVPD’s network should not be deprived of timely and potentially life-saving accessible emergency information that they otherwise would have received had they watched the same programming on a television.

14. Although we inquired in the *Further Notice* as to whether the emergency information rules should apply to an MVPD’s linear programming accessed outside the home, we find it more

³⁹ AT&T Comments at 3.

⁴⁰ Reply Comments of the Rehabilitation Engineering Research Center for Wireless Technologies, MB Docket Nos. 12-107, 11-43, at 5 (“Wireless RERC Reply”).

⁴¹ See NCTA Comments at 2; Wireless RERC Reply at 4; Letter from Diane B. Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, at 1 (Apr. 4, 2014) (“NCTA Apr. 4, 2014 *Ex Parte* Letter”). See also *First Report and Order*, 28 FCC Rcd at 4926-27, ¶ 80 & n.346 (stating that Cablevision currently permits consumers to access its entire package of video programming, including broadcast channels that contain emergency information, through its Optimum app for the iPad and other devices); Charter Communications, Press Release, *Charter Announces Launch of Charter TV App* (Apr. 8, 2014) (announcing the Charter TV App available for free download on various platforms, through which “Charter TV customers can now watch over 130 live TV Channels anywhere inside their home on their mobile devices such as tablets or smartphones”); Comcast, Xfinity TV Apps, available at <http://xfinitytv.comcast.net/apps> (“Turn any device into a personal TV screen anywhere in your home. Stream any channel live, watch XFINITY On Demand™ and access your DVR shows on your tablet, smartphone or computer.”); Cox, About the Contour App, available at <http://www.cox.com/residential/support/tv/article.cox?articleId=ee838930-c7d7-11e2-caa8-000000000000> (“With the Contour App, you can [w]atch over 130 live channels and thousands of On Demand programs while in the home.”); Time Warner Cable, TWC TV App, available at <http://www.timewarnercable.com/en/tv/features/twc-tv.html> (“Watch up to 300 live TV channels on up to five of your favorite devices simultaneously in your home with the TWC TV app”).

⁴² See Wireless RERC Reply at 3-4; Comments of Jose Cruz, MB Docket Nos. 12-107, 11-43, at 2 (arguing that “[t]he blind/visually impaired should be able to access emergency broadcasts from their MVPD . . . through mobile and/or other electronic devices,” which “may affect their well-being or the well-being of their families”); Comments of Jeanette M. Schmoyer, MB Docket Nos. 12-107, 11-43, at 1 (arguing that the accessible emergency information requirements should apply to television programming delivered over tablets, laptops, smartphones, and similar devices, and stating that “[a]t the rate technology changes, PC’s are already decreasing in sales in favor of laptops and tablets” and “[i]nformation provided as a visual element needs to be provided in an audio element no matter what the device”).

⁴³ See Wireless RERC Reply at 4.

appropriate to apply the rules when MVPDs permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD's network as part of their MVPD services. In the *Further Notice*, we noted that some MVPDs currently enable subscribers to access linear programming inside the home as well as outside the home (*i.e.*, TV Everywhere⁴⁴), and we sought comment on whether our emergency information rules should apply in both situations, irrespective of where the subscriber is physically located when accessing the programming.⁴⁵ Instead of applying our rules based on where the consumer is located when viewing the programming, we look instead to whether the programming is provided over the MVPD's network, as opposed to over the Internet, given that Internet-based video services are currently at issue in a separate proceeding.⁴⁶ NCTA argues that the rules should apply only within an MVPD subscriber's home, and not outside of the home, "both because of the limited scope of the statutory and regulatory definitions, and because of the nature of emergency information."⁴⁷ We conclude that focusing on whether the services are provided over the MVPD's network more clearly delineates the services subject to the rule and avoids confusion as to whether the rule applies with respect to OTT services that consumers may be able to access in their homes.⁴⁸ Further, to the extent NCTA's "in the home" construction is intended to ensure that the emergency information rules do not apply to video programming accessed over the Internet, our approach to cover linear programming accessed over the MVPD's network as part of an MVPD's services accomplishes this objective. Our emergency information rules do not apply, at this time, to an MVPD's linear programming that is accessed via the Internet, such as TV Everywhere offerings.

15. As mentioned above, we do not apply these rules to over-the-top services⁴⁹ provided by MVPDs at this time. In December 2014, we adopted a *Notice of Proposed Rulemaking* proposing to include within the definition of MVPD certain Internet-based video services.⁵⁰ Specifically, we proposed "to modernize our interpretation of the term 'multichannel video programming distributor' ('MVPD') by including within its scope services that make available for purchase, by subscribers or customers, multiple linear streams of video programming, regardless of the technology used to distribute the programming."⁵¹ In that NPRM, we specifically sought comment on the application of our rules pertaining to accessibility

⁴⁴ See 16th *Video Competition Report*, ¶ 3 ("These services, referred to as 'TV Everywhere,' allow MVPD subscribers to access both linear and video-on-demand ('VOD') programming on a variety of in-home and mobile Internet-connected devices."); *id.* at n.22 ("TV Everywhere is an authentication system whereby certain movies and television shows are accessible online via a variety of display devices including personal computer, mobile, and television – but only if you can prove (or 'authenticate') that you have a subscription to an MVPD."); *id.* ¶ 85 ("Most of the video programming offered on TV Everywhere is available only to MVPD subscribers. Access to TV Everywhere video programming is restricted through the use of an authentication process that requires a subscriber to select their MVPD service provider and then provide a user ID and password.") (citation omitted).

⁴⁵ *First Report and Order*, 28 FCC Red at 4927, ¶ 80.

⁴⁶ See *infra* ¶ 15.

⁴⁷ NCTA Comments at 3, n.11. See also AT&T Comments at 1; CEA Comments at 4 ("The Commission consistently has applied Section[] 79.2 only in the context of traditional broadcast television and MVPD services, which are classic examples of services for residential reception that deliver such programming directly to the home.") (citation omitted); TIA Comments at 4 ("The Commission's video description and emergency information requirements are appropriately limited to the MVPD's traditional programming offered within the home, and that qualifies as linear video programming under Part 79.1 of the Commission's rules."); ESA Reply at 3 ("The CVAA imposes emergency information requirements not on the full range of video programming, but only on that programming intended for in-home reception.").

⁴⁸ Moreover, we disagree with NCTA's argument that emergency information is irrelevant to a subscriber outside of his or her home. See NCTA Comments at 3, n.11.

⁴⁹ See *supra* note 26.

⁵⁰ See *MVPD Definition NPRM*, 29 FCC Red at 15996, ¶ 1.

⁵¹ *Id.*

of emergency information by persons with disabilities to Internet-based distributors of video programming that qualify as MVPDs under the proposed definition.⁵² We conclude, therefore, that application of the emergency information rules to such services is better addressed in that proceeding.

2. MVPD Obligations

16. We conclude that MVPDs must ensure that any application or plug-in that they provide to consumers to access linear programming over the MVPD's network on mobile and other devices is capable of passing through the aural representation of emergency information (including the accompanying aural tone) on a secondary audio stream. In so concluding, we do not change the underlying obligations applicable to video programming distributors and video programming providers as set forth in the *First Report and Order*. In the *First Report and Order*, the Commission concluded that the video programming distributor or video programming provider that creates 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.⁵³ The Commission also found that video programming distributors are responsible for ensuring that the aural representation of the emergency information and the accompanying aural tone get passed through to consumers.⁵⁴ NCTA asserts that "the *Further Notice* appears to contemplate an additional requirement that operators 'mak[e] the emergency information audible on a secondary audio stream' on devices that they do not control," which, they argue, goes beyond the requirement to ensure that aural emergency information gets passed through to consumers.⁵⁵ We agree that, consistent with the responsibilities set forth in the current rule, to the extent MVPDs do not originate visual emergency information that is added to the programming stream, they are not responsible for providing an aural representation of the information on a secondary audio stream.⁵⁶ MVPDs are responsible for ensuring that the aural representation of emergency information on the secondary audio stream gets passed through to consumers, and we find that this obligation applies if the MVPD permits the consumer to view linear programming on mobile and other devices over the MVPD's network as part of its MVPD services.

3. Apparatus Manufacturer Obligations

17. We also sought comment in the *Further Notice* as to whether apparatus manufacturers covered by Section 203 of the CVAA should be required to ensure that tablets, laptops, personal computers, smartphones, and similar devices are capable of receiving the secondary audio stream.⁵⁷ As part of this inquiry, we asked whether apparatus manufacturers should be solely responsible for making emergency information accessible on these types of devices, or whether both the MVPD and the manufacturer have a role in facilitating the provision of the secondary audio stream on such devices.⁵⁸

⁵² *Id.* at 16021, ¶ 56.

⁵³ *First Report and Order*, 28 FCC Rcd at 4899, ¶ 36; 47 C.F.R. § 79.2(b)(2)(ii). In addition, both video programming distributors and video programming providers are responsible for ensuring that aural emergency information supersedes all other programming on the secondary audio stream, with each entity responsible only for its own actions or omissions in this regard. *First Report and Order*, 28 FCC Rcd at 4900, ¶ 36; 47 C.F.R. § 79.2(b)(5).

⁵⁴ *First Report and Order*, 28 FCC Rcd at 4899-900, ¶ 36; 47 C.F.R. § 79.2(b)(2)(ii).

⁵⁵ NCTA Comments at 3-4 (citation omitted).

⁵⁶ Although NCTA argues that "[c]able operators do not originate the type of 'emergency information' addressed by the Commission's new rule," but "simply pass along the aural emergency information contained in a secondary audio stream that is created by the originator of that information," NCTA Comments at 4, we reiterate our position "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." *First Report and Order*, 28 FCC Rcd at 4899, n.159.

⁵⁷ *First Report and Order*, 28 FCC Rcd at 4927, ¶ 81.

⁵⁸ *Id.*

Consumer electronics industry commenters argue that manufacturers should not be subject to compliance obligations because apparatus have no control over the audio functionality of MVPD applications and technologies used to distribute linear programming on mobile and other devices.⁵⁹ For example, CTIA–The Wireless Association (“CTIA”) explains that mobile device manufacturers have no control over the development or installation of MVPD applications, and once an MVPD application is installed on a mobile device, the application controls the audio capabilities, *i.e.*, whether there are multiple audio streams and which audio stream is heard by the user.⁶⁰ According to CTIA, “the mobile device simply supports the general audio functionality of the device, so that it will play whatever audio stream the app itself provides.”⁶¹ Likewise, CEA contends that if an MVPD application is capable of delivering and switching between more than one audio stream for linear programming, the device generally will play the audio stream delivered by the application.⁶²

18. Based on the record, we do not impose compliance obligations on the manufacturers of apparatus covered by Section 203 of the CVAA with regard to ensuring that any application or plug-in that MVPDs provide to consumers to access linear programming on mobile and other devices is capable of passing through audible emergency information on a secondary audio stream. The record demonstrates that such entities typically do not control either the applications or technologies in question or the ability of consumers to select and receive the secondary audio stream for MVPD-provided linear programming on mobile and other devices. We believe that the responsibility for passing through the aural representation of emergency information in the secondary audio stream properly lies with MVPDs. However, to the extent MVPD applications or other technologies have been designed and developed to work on a specific type of device or platform, we expect that users will be able to hear the secondary audio stream in an MVPD application through the native audio functionality of the device, as professed by industry commenters.⁶³ We may impose obligations on manufacturers in the future if we find that the apparatus itself does not make a secondary audio stream with audible emergency information from an MVPD application available to the apparatus user or otherwise impedes the ability of a user to hear the secondary audio stream.⁶⁴

4. Compliance Deadline

19. We adopt a compliance deadline of two years after publication of the *Second Report and Order* in the *Federal Register*. NCTA requests that the Commission provide MVPDs at least two years after adoption of new requirements to come into compliance because of the technical challenges

⁵⁹ See Comments of CTIA–The Wireless Association, MB Docket Nos. 12-107, 11-43, at 2, 5-6 (“CTIA Comments”); CEA Comments at 10-11; TIA Comments at 4-5; ITIC Reply at 5; Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, at 2 (Mar. 28, 2014) (“CEA Mar. 28, 2014 *Ex Parte* Letter”). See also Wireless RERC Reply at 5 (agreeing with TIA and CTIA that the responsibility for accessible emergency information on mobile and other devices lies with MVPDs because they are providing the video programming via an application or website, and “thus the mobile device in this case is serving as a conduit”).

⁶⁰ CTIA Comments at 5.

⁶¹ *Id.*

⁶² CEA Mar. 28, 2014 *Ex Parte* Letter at 1-2.

⁶³ See *supra* ¶ 17.

⁶⁴ See ESA Reply at 4 (“If . . . the Commission were to impose emergency information requirements on IP-delivered linear video programming within the home, any responsibility on devices should be limited to a ‘do not block’ or ‘do no harm’ requirement.”). See also Wireless RERC Reply at 5 (“[I]f mobile device manufacture[r]s at any point incorporate the ability to tune into linear programming via a chip or other built-in modification (via software, hardware or firmware) or an app that is ‘integrated into a mobile device by the manufacturer,’ then the device manufacturer should be responsible for ensuring the provision of accessible emergency information.”) (citation omitted).

involved.⁶⁵ NCTA explains that passing through a secondary audio stream to mobile and other devices in the home is “a different, more complex, and more costly matter” than passing a secondary audio stream through to a television set.⁶⁶ According to NCTA, “cable operators generally just pass through the primary audio stream to operator-provided apps,” and thus, “operators would have to acquire additional equipment and encoding to support the pass through of an additional audio stream in IP,” and “operators may need to provide audio enhancements to many different apps created to serve a multiplicity of devices in the home.”⁶⁷ Given these challenges, NCTA asks for sufficient time to allow operators to support the capability for a secondary audio stream on these devices going forward.⁶⁸ DIRECTV states that developing the technological ecosystem to support a secondary audio stream for emergency information in the IP context “would be a massive undertaking” because linear programming delivered via IP does not currently include this capability, the equipment used to view such programming does not currently support it, and adding additional data to the video stream would further congest strained broadband capabilities.⁶⁹

20. Although we acknowledge that today MVPDs typically pass through a single audio stream in the IP context,⁷⁰ the record also demonstrates that at least some MVPDs are already able to use a secondary audio stream to deliver emergency information when they provide linear programming on mobile and other devices. Notably, Comcast has made investments in infrastructure to enable the secondary audio stream when it offers its cable services through its Xfinity applications, and, currently, “Comcast customers can access the secondary audio stream via the Xfinity user interface on a number of third-party devices.”⁷¹ Further, Cablevision customers currently can access the secondary audio stream when using Cablevision’s Optimum application on a laptop or personal computer, though not when using this application on other mobile devices.⁷² Cablevision has already initiated efforts to transmit the secondary audio stream over the Optimum application on mobile and other devices, and explains that the process of implementing this functionality involves further development of the application, software upgrades, and testing.⁷³

21. Based on our review of the record, we conclude that a compliance deadline of two years after publication of the *Second Report and Order* in the *Federal Register* is reasonable, though we encourage covered MVPDs to offer this functionality as soon as it is technically feasible for them to do

⁶⁵ NCTA Comments at 5. *See also* CEA Comments at 9 (arguing that a two-year period would be consistent with deadlines the Commission has adopted in other CVAA proceedings); ESA Reply at 4 (suggesting that “any deadline should be subject to industry development of appropriate technical standards, with a subsequent phase-in period of at least two years after adoption of such standard to address any complicated handoffs of other technical and business challenges”).

⁶⁶ NCTA Comments at 4-5.

⁶⁷ *Id.* at 5. *See also* NCTA Apr. 4, 2014 *Ex Parte* Letter at 1-2.

⁶⁸ NCTA Apr. 4, 2014 *Ex Parte* Letter at 2.

⁶⁹ DIRECTV Comments at 7. *See also* NAB Reply at 3.

⁷⁰ NCTA Apr. 4, 2014 *Ex Parte* Letter at 1.

⁷¹ *See* Letter from James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 1 (May 23, 2014).

⁷² *See* Letter from Tara M. Corvo, Counsel for Cablevision Systems Corp., to Marlene H. Dortch, Secretary, FCC, at 1 (June 26, 2014).

⁷³ *Id.* In addition, we note that Netflix has begun to include alternative audio tracks for their programming on Netflix-supported devices. *See* Todd Spangler, Netflix Adding Audio Description Tracks for Visually Impaired, Starting with ‘Marvel’s Daredevil,’ VARIETY (Apr. 14, 2015), *available at* <http://variety.com/2015/digital/news/netflix-adding-audio-description-tracks-for-visually-impaired-starting-with-marvels-daredevil-1201472372/#> (noting that “the company is working with studios and other content owners to increase the amount of audio description across a range of devices including smart TVs, tablets and smartphones”).

so. The record shows that MVPDs may need to take a number of steps to achieve compliance, such as acquiring additional equipment to support the pass through of the secondary audio stream for IP and developing or modifying applications to support this type of audio functionality for a number of devices. We believe that a two-year period will provide sufficient time for MVPDs to achieve these steps, along with the requisite testing and implementation, and is consistent with other timeframes adopted by the Commission for CVAA-related compliance.⁷⁴

B. Activation Mechanism for Audible Emergency Information on the Secondary Audio Stream

22. We require manufacturers of apparatus subject to Section 79.105 of the Commission's rules⁷⁵ to provide a mechanism that is simple and easy to use, such as one that is reasonably comparable to a button, key, or icon, for activating the secondary audio stream for audible emergency information. We conclude that such a requirement is necessary to ensure that covered apparatus are capable of making available emergency information in a manner that is accessible to individuals who are blind or visually impaired, as mandated by Section 203 of the CVAA.⁷⁶

1. Legal and Policy Analysis

23. In the *User Interfaces Further Notice*, the Commission sought comment on whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream used for audible emergency information in a simple, straightforward, and timely manner, such as through a mechanism reasonably comparable to a button, key, or icon.⁷⁷ Section 303(u)(1)(C) of the Act, as added by Section 203 of the CVAA, requires that apparatus designed to receive and play back video programming transmitted simultaneously with sound "have the capability to decode and make available emergency information (as that term is defined in section 79.2 of the Commission's regulations (47 CFR 79.2)) in a manner that is accessible to individuals who are blind or visually impaired."⁷⁸ Further, Section 203 also provides the Commission with authority to "prescribe such regulations as are necessary to implement the requirements of section[] 303(u) . . . of the Communications Act."⁷⁹ Pursuant to these statutory provisions, we find that the Commission has authority to require that the secondary audio stream – which is used to make emergency information audible to individuals who are blind or visually impaired – be made available on covered apparatus in a manner that is accessible to such individuals.⁸⁰

24. As noted above, in the *First Report and Order*, we required video programming providers and distributors to use the secondary audio stream as the means to provide accessible emergency information for individuals who are blind or visually impaired in accordance with Section 202 of the CVAA.⁸¹ Thus, to implement Section 203 of the CVAA, we required apparatus designed to receive

⁷⁴ See *First Report and Order*, 28 FCC Rcd at 4901, ¶ 37.

⁷⁵ 47 C.F.R. § 79.105. Covered apparatus include apparatus that are designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to Sections 79.2 and 79.3, are manufactured or imported for use in the United States, and use a picture screen of any size, subject to certain exemptions. See *id.* §§ 79.105(a)-(b).

⁷⁶ 47 U.S.C. § 303(u)(1)(C).

⁷⁷ *User Interfaces Order*, 28 FCC Rcd at 17417, ¶ 145.

⁷⁸ 47 U.S.C. § 303(u)(1)(C).

⁷⁹ Pub. L. No. 111-260, § 203(d).

⁸⁰ See Reply Comments of the Rehabilitation Engineering Research Center for Wireless Technologies, MB Docket Nos. 12-108, 12-107, at 8 (Feb. 25, 2014) ("Wireless RERC *User Interfaces* Reply Comments"); Reply Comments of the American Foundation for the Blind and the American Council of the Blind, MB Docket Nos. 12-108, 12-107, at 2 (Mar. 20, 2014) ("AFB/ACB *User Interfaces* Reply Comments").

⁸¹ See *supra* ¶ 6.

and play back video programming transmitted simultaneously with sound to decode and make available the secondary audio stream in a manner that enables consumers to select the stream used for transmission and delivery of emergency information.⁸² Notably, the Commission was given authority and discretion to promulgate regulations requiring covered entities to convey emergency information in a manner accessible to individuals who are blind or visually impaired. Use of the secondary audio stream to provide audible emergency information was not mandated by Congress.⁸³ For example, the Commission could have required that visual emergency information be made audible on the main program audio.⁸⁴ Given broad-based support from consumers and industry, as well as the recommendation of the VPAAC, however, the Commission decided that the secondary audio stream would be the best method to make visual information presented during non-newscast programming audibly accessible to individuals who are blind or visually impaired.⁸⁵ Yet, emergency information presented aurally on the secondary audio stream is not, as a practical matter, fully accessible to such individuals unless they are able to promptly switch to the secondary audio stream to hear the critical details of an emergency in a timely manner. As the VPAAC concluded, unless blind or visually impaired consumers are able to more easily control the means of accessing the secondary audio stream on devices, “emergency information present on the secondary audio channel may not be readily accessible.”⁸⁶

25. Although the requirements related to the provision of accessible emergency information on a secondary audio stream have not yet gone into effect,⁸⁷ the experiences of consumers who use the secondary audio stream for video description are illustrative in showing how difficult it is for consumers to access any kind of programming on the secondary audio stream. Currently, the process for activating the secondary audio stream is often arduous and time-consuming.⁸⁸ In the *User Interfaces Further Notice*, the Commission observed that individuals who are blind or visually impaired have experienced difficulty with accessing the secondary audio stream because the mechanism for switching to the secondary audio stream from the main program audio is buried in several layers of on-screen menus.⁸⁹ Likewise, in a CVAA-required report to Congress on video description, the Commission noted that numerous individual commenters who are blind or visually impaired contend that activating the secondary audio stream on televisions and set-top boxes is challenging, and sometimes impossible for individuals who are blind or visually impaired, due to the complexities of navigating through multiple on-

⁸² *First Report and Order*, 28 FCC Rcd at 4907, ¶ 50; 47 C.F.R. § 79.105(a).

⁸³ See 47 U.S.C. §§ 613(g)(1)-(2), 303(u)(1)(C). See also S. Rep. No. 111-386, at 13 (“The Committee is aware that emergency alert information is inherently local and time sensitive in nature. Therefore it is the intention of the Committee that the Commission have flexibility with respect to applying the requirements of new section 713(g). . . .”); H.R. Rep. No. 111-563, at 29 (same).

⁸⁴ See *VPAAC Second Report: Access to Emergency Information* at 8. See also *id.* at 11-12.

⁸⁵ See *supra* ¶ 6.

⁸⁶ *VPAAC Second Report: Access to Emergency Information* at 7-8 (“To obtain emergency information from television programming, many users with visual disabilities require a greater level of access to controls on receiving devices than most models of such devices offer today. . . . [A] blind or visually impaired person will need a reliable method of accessing the secondary audio feed if emergency information is to be provided on [this] service.”).

⁸⁷ Compliance with the accessible emergency information rules adopted in the *First Report and Order* is required by May 26, 2015, subject to certain exceptions. See 47 C.F.R. §§ 79.2(b)(2)(ii), 79.105(a), 79.106(a). See also *First Report and Order*, 28 FCC Rcd at 4900-05, 4923-25, ¶¶ 37-45, ¶¶ 76-77.

⁸⁸ See AFB/ACB *User Interfaces* Reply Comments at 2 (noting that AFB, ACB, and individual consumers “have commented on the current difficulty, and frequently virtual impossibility, of locating [video] description controls and turning [video] description on”); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report to Congress, 29 FCC Rcd 8011, 8026, ¶ 32, nn.102-05 (2014) (“*Video Description Report to Congress*”).

⁸⁹ *User Interfaces Order*, 28 FCC Rcd at 17418, ¶ 145.

screen menus to select this feature.⁹⁰ While it is important that consumers who are blind or visually impaired are able to access the secondary audio stream for video description services, it is even more critical that consumers who are blind or visually impaired are able to access the secondary audio stream for audible emergency information, and that they are able to do so in a timely manner.⁹¹ In an emergency situation, every second counts. Thus, to ensure that emergency information is made readily accessible, we conclude that individuals who are blind or visually impaired must be able to activate the secondary audio stream in a simple and easy to use manner.

26. Requiring a simple and easy to use mechanism for activating the secondary audio stream for emergency information will provide a substantial benefit for consumers who are blind or visually impaired by providing an easy and quick method to switch to the secondary audio stream to hear critical emergency information. According to AFB and ACB, “the importance of a streamlined and obvious means for accessing emergency information is indispensable,” given that the information being accessed “may very well save lives.”⁹² Indeed, as the Commission has consistently recognized, “providing all viewers with accurate information regarding emergencies is of great importance.”⁹³ Emergency information is of unique significance given its potential impact on public safety, and it is essential that persons with disabilities have access to the same time-sensitive emergency information to which other viewers have access. Our emergency information requirements, including the activation mechanism requirement we adopt here, will ensure that critical information that is conveyed on television to further the protection of life, health, safety, and property in an emergency is available to every viewer in a timely manner, including persons with visual disabilities.

27. We find that requiring the provision of a simple and easy to use activation mechanism for audible emergency information on the secondary audio stream is necessary to fulfill the statute’s mandate that emergency information be made accessible to individuals who are blind or visually impaired. This is particularly true given the time-sensitive nature of emergency information. At the same time, however, we believe it is important that the industry has flexibility in choosing the precise means for activating the secondary audio stream.⁹⁴ Accordingly, we do not mandate a particular means of compliance. For example, we note that the VPAAC stated that covered entities could provide a dedicated button on a remote control to activate the secondary audio stream, a mechanism it singled out as useful.⁹⁵ However,

⁹⁰ *Video Description Report to Congress*, 29 FCC Rcd at 8026, ¶ 32.

⁹¹ See *VPAAC Second Report: Access to Emergency Information* at 7 (“The effective use of video description by the blind or visually impaired for any purpose requires convenient, reliable and readily available access to the video description service [on the secondary audio stream]. If this service is to convey emergency information, the convenience of such access is all the more important.”).

⁹² AFB/ACB *User Interfaces* Reply Comments at 2. See also Wireless RERC *User Interfaces* Reply Comments at 9 (strongly urging the Commission to adopt a requirement for a mechanism reasonably comparable to a button, key, or icon for accessing the secondary audio stream for audible emergency information because “[t]his can be a life and death scenario where people with vision disabilities would miss information that affects their immediate safety”).

⁹³ *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Accessibility of Emergency Programming*, MM Docket No. 95-176, Second Report and Order, 15 FCC Rcd 6615, ¶ 9 (2000) (citing *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, 3386, ¶ 252 (1998), and Further Notice of Proposed Rulemaking, 13 FCC Rcd 5627, 5630-31, ¶ 8 (1998)).

⁹⁴ See *User Interfaces Order*, 28 FCC Rcd at 17381-82, ¶ 81 (stating that the requirement to provide an activation mechanism reasonably comparable to a button, key, or icon “is consistent with Congress’s intent ‘to ensure ready access to [closed captioning and video description] features by persons with disabilities,’ while still giving covered entities the flexibility contemplated by the statute”).

⁹⁵ See *VPAAC Second Report: Access to Emergency Information* at 8-9 (“In the event that . . . the crawl or scroll is made auditory in the secondary audio channel, several other methods could possibly be used to assist visually

(continued....)

we believe the better path is to give industry the flexibility to develop simple and easy to use activation methods, similar to the approach we adopted to implement the requirements of Sections 204 and 205 of the CVAA.⁹⁶ Some industry commenters have indicated that they have already begun developing innovative approaches to comply with the activation mechanism rules adopted in the *User Interfaces Order*. For example, NCTA states that activation methods now in development include programmable buttons on remote controls and that voice and gesture controls will likely be offered in addition to these methods.⁹⁷

28. Industry commenters raise a number of legal arguments as to why they believe the Commission should not require an activation mechanism for audible emergency information on Section 203 apparatus, but we find each of them to be unpersuasive. As we explain below, we require covered entities to provide a simple and easy to use activation mechanism and find that a mechanism reasonably comparable to a button, key, or icon would satisfy this standard.⁹⁸ We disagree with commenters who contend that the Commission should not require covered entities to provide a simple means for accessing the secondary audio stream for emergency information because Section 203 does not contain such a mandate.⁹⁹ As explained above, Section 303(u)(1)(C) of the Act requires generally that covered apparatus have the capability to make available emergency information in an accessible manner, and Section 203 of the CVAA grants the Commission authority to adopt regulations that are necessary to implement this requirement.¹⁰⁰ Thus, the Commission has latitude to adopt requirements that will ensure that emergency information is made available in an accessible manner.

29. For similar reasons, we reject industry commenters' argument that the Commission has no authority to require an activation mechanism for audible emergency information because Congress specifically required an activation mechanism reasonably comparable to a button, key, or icon in Sections 204 and 205 of the CVAA, but not in Section 203 of the CVAA.¹⁰¹ CEA opines that "[i]f Congress had meant for such a specific requirement to apply to emergency information, it surely would have said so in Section 203."¹⁰² However, this argument also fails to recognize that Congress gave the Commission

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impaired consumers in gaining access to this audio service. For example, physical buttons on the remote control may help individuals with visual disabilities enable the second audio channel.”).

⁹⁶ *User Interfaces Order*, 28 FCC Rcd at 17381-82, ¶ 81.

⁹⁷ See National Cable & Telecommunications Association, Opposition to Petition for Reconsideration, MB Docket Nos. 12-108, 12-07, at 7 (filed Feb. 18, 2014). See also Letter from James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 20, 2015) (detailing a demonstration of how consumers can activate and use the talking guide, closed captioning, and video description on Comcast's X1 platform).

⁹⁸ See *infra* ¶ 31.

⁹⁹ Comments of the Consumer Electronics Association, MB Docket Nos. 12-108, 12-107, at 8 (Feb. 18, 2014) (“CEA *User Interfaces* Comments”). See also Comments of DISH Network L.L.C. and EchoStar Technologies L.L.C., MB Docket Nos. 12-108, 12-107, at 6 (Feb. 18, 2014) (“DISH/EchoStar *User Interfaces* Comments”) (“The absence of a ‘reasonably comparable’ mechanism requirement in Section 203 precludes the Commission from imposing such a requirement in that context.”); Reply Comments of the Consumer Electronics Association, MB Docket Nos. 12-108, 12-107, at 5 (Mar. 20, 2014) (“CEA *User Interfaces* Reply Comments”).

¹⁰⁰ 47 U.S.C. § 303(u)(1)(C); Pub. L. No. 111-260, § 203(d).

¹⁰¹ See CEA *User Interfaces* Comments at 9; DISH/EchoStar *User Interfaces* Comments at 5-7; Comments of the National Cable & Telecommunications Association, MB Docket Nos. 12-108, 12-107, at 6 (Feb. 18, 2014) (“NCTA *User Interfaces* Comments”).

¹⁰² CEA *User Interfaces* Comments at 9. See also DISH/EchoStar *User Interfaces* Comments at 6 (“If Congress had intended for the Commission to require that access to the secondary audio stream for audible emergency information on apparatus covered by Section 203 be available via a mechanism ‘reasonably comparable to a button, key, or icon,’ or any other specified mechanism, Congress would have stated so.”); NCTA *User Interfaces* Comments at 6 (noting that Section 205 specifically references a mechanism for activating closed captioning, but “Section 203 . . .

(continued....)

authority to identify methods to convey emergency information in a manner accessible to individuals who are blind or visually impaired, and to promulgate regulations (i) requiring covered video programming providers and distributors to convey emergency information in an accessible manner, and (ii) requiring covered apparatus to have the capability to make emergency information available in an accessible manner.¹⁰³ In other words, as discussed above, when Congress enacted the CVAA, it did not specify the particular requirements for making emergency information available in a manner accessible to individuals who are blind or visually impaired. Rather, it gave the Commission authority and discretion to adopt implementing regulations. Moreover, as Congress did not specify in the statute that covered entities must use a secondary audio stream to convey audible emergency information to individuals who are blind or visually impaired, there was no reason for Congress to mandate a simple and easy to use mechanism to access that stream. Indeed, had the Commission chosen instead to implement Section 203 by requiring all emergency information to be audible on the primary audio stream, there would have been no need for an activation mechanism for the secondary audio stream that is reasonably comparable to a button, key, or icon. Thus, even though the “reasonably comparable to a button, key, or icon” language is included in other sections of the CVAA, we do not believe its omission from Section 203 is indicative of Congress’ intent to bar the Commission from requiring an activation mechanism in the emergency information context. We find this argument fails to recognize the rulemaking authority Congress granted the Commission in Section 203 to ensure that covered apparatus have the capability to make available emergency information in an accessible manner. As explained above, the record demonstrates that such a mechanism is necessary to carry out the statutory directive.¹⁰⁴

30. NCTA and CEA point out that the Commission adopted rules pursuant to Sections 204 and 205 of the CVAA requiring the accessibility of appropriate built-in apparatus functions on digital apparatus and the audible accessibility of on-screen text menus and guides used for the display or selection of multichannel video programming on navigation devices for individuals who are blind or visually impaired.¹⁰⁵ According to NCTA and CEA, because individuals who are blind or visually impaired will have audible access to the on-screen menus used to locate the secondary audio stream, “no additional dedicated ‘mechanism’ will be needed for blind or visually impaired customers to be able to

(Continued from previous page)

does not reference a mechanism at all. Under these circumstances, no additional authority to impose such a requirement can be inferred.”); CEA *User Interfaces* Reply Comments at 6. See also Letter from Diane B. Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, at 1 (Feb. 18, 2015) (“NCTA Feb. 18, 2015 *Ex Parte* Letter”).

¹⁰³ See 47 U.S.C. §§ 613(g)(1)-(2), 303(u)(1)(C).

¹⁰⁴ Commissioner Pai dissents “from the requirement that manufacturers of televisions, set-top boxes, and other covered devices include in those apparatuses a mechanism for activating the secondary audio stream for emergency information that is reasonably comparable to a button, key, or icon.” He objects to what he describes as importing into the rules implementing Section 203 of the CVAA specific mandates set forth in Sections 204 and 205 of the CVAA. See *Statement of Commissioner Ajit Pai, Approving in Part and Dissenting in Part*. The rule we adopt today, however, does no such thing. Rather, it requires only that “all apparatus subject to this section must provide a simple and easy to use mechanism for activating the secondary audio stream for audible emergency information.” See *Appendix B, Section 79.105(d)*. While the dissent distinguishes between “the capabilities that devices must have” and “the means of activating those capabilities,” *id.*, the Commission finds that distinction artificial. In directing the Commission to ensure that covered apparatus “have the capability to decode and make available emergency information . . . in a manner that is accessible to individuals who are blind or visually impaired,” the majority does not believe that Congress intended that such apparatus have capabilities such as an audio stream of emergency information that are impossible for individuals who are blind or vision impaired to activate quickly when they are needed – in an emergency. Such a distinction would be self-defeating. As discussed in the order, the statutory directive that the Commission adopt rules ensuring that emergency information is *accessible* to individuals who are blind or visually impaired grants the Commission ample authority for the rules we adopt today.

¹⁰⁵ See NCTA *User Interfaces* Comments at 7; CEA *User Interfaces* Reply Comments at 6.

readily locate” the secondary audio stream for emergency information.¹⁰⁶ Although we believe that these new regulations will make it easier for individuals who are blind or visually impaired to access the secondary audio stream for video description, they will not fully alleviate accessibility issues with regard to audible emergency information. In particular, if the activation mechanism for the secondary audio stream is buried in multiple levels of menus, it will still be a time-consuming process for individuals who are blind or visually impaired to navigate through those menus, even if the menus are made audible, and such individuals will not have ready and immediate access to time-sensitive emergency information. As AFB and ACB emphasize, “it is imperative that the Commission . . . ensure ease of use so that consumers are not confounded by avoidable technological barriers at the very time when time is of the essence.”¹⁰⁷ We find that, as part of their obligation to make emergency information available in a manner that is accessible to individuals who are blind or visually impaired, manufacturers of covered apparatus must ensure that these individuals are provided with a mechanism to quickly activate the secondary audio stream to hear audible emergency information.

2. Apparatus Manufacturer Obligations

31. Manufacturers of apparatus covered by Section 79.105 of the Commission’s rules must provide a simple and easy to use mechanism for activating the secondary audio stream for audible emergency information.¹⁰⁸ As described above, to provide some guidance to industry, we find that providing a mechanism reasonably comparable to a button, key, or icon – as is required for activating closed captioning and video description on Section 204 digital apparatus, and for activating closed captioning on Section 205 navigation devices – would comply with the requirement to provide a simple and easy to use mechanism for activating the secondary audio stream for audible emergency information. The Commission will consider the simplicity and ease of use of the mechanism in determining whether the statutory requirement has been met, *i.e.*, that the covered apparatus has the capability to make available emergency information in an accessible manner. Consistent with our approach in the *User Interfaces Order*,¹⁰⁹ we will consider examples of compliant mechanisms to include, but not be limited to, a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.¹¹⁰ This approach will ensure ready access to the secondary audio stream by persons who are blind and visually impaired, while still giving covered manufacturers the flexibility to

¹⁰⁶ *Id.* See also NCTA Feb. 18, 2015 *Ex Parte* Letter at 1, n.2 (“We further explained that audibly-accessible guides and menus will assist blind or visually impaired individuals in locating [the] secondary audio stream that will contain emergency information as well as video description.”).

¹⁰⁷ AFB/ACB *User Interfaces* Reply Comments at 2.

¹⁰⁸ We emphasize that manufacturers will need to ensure that set-top boxes include a simple and easy to use activation mechanism for emergency information on the secondary audio stream. We seek comment in the *Second Further Notice* on whether we should require MVPDs to provide their customers with set-top boxes that contain the simple and easy to use activation mechanism for the secondary audio stream. See *infra* Section IV. We also note that manufacturers of televisions and other digital apparatus covered by Section 204 of the CVAA are already required to provide a mechanism reasonably comparable to a button, key, or icon for activating the secondary audio stream for video description by December 20, 2016 and thus, as a practical matter, they should not need to take additional steps to comply with the rule we adopt here. See 47 C.F.R. §§ 79.109(a)(2), (c).

¹⁰⁹ *User Interfaces Order*, 28 FCC Rcd at 17381-82, ¶ 81.

¹¹⁰ *Id.* at 17382, ¶ 81. The Commission is considering a Petition for Reconsideration filed by the National Association of the Deaf along with other consumer and academic groups which asks the Commission to reconsider allowing voice commands as compliant mechanisms for activating closed captioning, and to reconsider allowing gestures as compliant mechanisms for activating closed captioning and video description. See Petition for Reconsideration of the National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, and Technology Access Program Gallaudet University, MB Docket Nos. 12-107, 12-108 (Jan. 20, 2014).

determine the appropriate activation mechanism, as long as it is simple and easy to use in accordance with our rules.

32. We find that manufacturers are not responsible for providing a simple and easy to use mechanism to activate the secondary audio stream for emergency information on third-party MVPD applications and plug-ins that are downloaded by consumers to view linear programming on mobile and other devices. As noted above, manufacturers typically do not control such applications and, in particular, they do not control the ability of consumers to select and receive the secondary audio stream for linear programming provided through an MVPD application on mobile and other devices.¹¹¹ In the *Second Further Notice*, we seek comment on whether we should impose an obligation on MVPDs to provide a simple and easy to use activation mechanism for the secondary audio stream to access emergency information with respect to the applications and plug-ins they provide to consumers to access linear programming on mobile and other devices.¹¹² In the meantime, we strongly encourage MVPDs to design their applications and plug-ins such in a way that access to the secondary audio stream is simple and easy to use for individuals who are blind or visually impaired. In this regard, we urge MVPDs to consult with the disability community when designing and developing these features.

33. We note that the provisions for achievability determinations, purpose-based waivers, and exemptions that apply to devices covered by Section 79.105 of the Commission's rules will apply equally to the requirement that covered apparatus provide an activation mechanism that is simple and easy to use for accessing the secondary audio stream.¹¹³ In addition, apparatus designed to receive and play back video programming transmitted simultaneously with sound must comply with Section 203 requirements only to the extent they are "technically feasible."¹¹⁴ Thus, we permit covered manufacturers to raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or to file a request for a ruling under Section 1.41 of the Commission's rules as to technical feasibility before manufacturing or importing the product, consistent with our approach in the *First Report and Order*.¹¹⁵ Although we note that apparatus manufacturers may use alternate means of compliance with the rules adopted pursuant to Section 203, consistent with our approach in the *First Report and Order*,¹¹⁶ we believe that few, if any, manufacturers will need to request an alternate means of compliance with the requirement to make the secondary audio stream accessible by providing a simple and easy to use activation mechanism because we do not prescribe the precise means for compliance.

3. Compliance Deadline

34. In the *User Interfaces Further Notice*, the Commission sought comment on the appropriate time frame for requiring covered entities to provide a simple and easy to use mechanism for accessing the secondary audio stream for audible emergency information.¹¹⁷ The Commission also inquired whether the deadline should be consistent with the deadline for compliance with Section 203

¹¹¹ See *supra* ¶¶ 17-18.

¹¹² See *infra* Section IV.

¹¹³ See 47 C.F.R. §§ 79.105(b)(1)-(2) (exempt apparatus), 79.105(b)(3) (achievability), 79.105(b)(4) (purpose-based waivers). See also *First Report and Order*, 28 FCC Rcd at 4918-22, ¶¶ 67-74.

¹¹⁴ See 47 U.S.C. § 303(u).

¹¹⁵ See *First Report and Order*, 28 FCC Rcd at 4917-18, ¶ 66.

¹¹⁶ See *id.* at 4923, ¶ 75; Pub. L. No. 111-260, § 203(e). Under this approach, an entity that seeks to use an alternate means to comply with the apparatus requirements must file a request pursuant to Section 1.41 of the Commission's rules for a determination that the proposed alternative satisfies the statutory requirements. See *First Report and Order*, 28 FCC Rcd at 4923, ¶ 75 ("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."). We will consider such requests on a case-by-case basis. See *id.*

¹¹⁷ *User Interfaces Order*, 28 FCC Rcd at 17418, ¶ 147.

apparatus requirements that were adopted in the *First Report and Order* (May 26, 2015)¹¹⁸ or whether device manufacturers would need additional time to come into compliance.¹¹⁹

35. The Wireless RERC, the only party to comment on this issue, argues that the deadline for a requirement to provide a simple and easy to use mechanism for accessing the secondary audio stream for audible emergency information should be consistent with the deadlines for apparatus that the Commission adopted in the *First Report and Order*.¹²⁰ The Wireless RERC strongly recommends that the Commission not go beyond the deadlines adopted in that *Order* because delays in implementation of the new requirements could place persons who are blind or visually impaired in a potentially “perilous position[]”.¹²¹ Further, the Wireless RERC asserts that any extensions of the deadline or waivers of the newly adopted regulations “should be granted very judiciously.”¹²²

36. We conclude that it is reasonable to apply the same compliance deadline that we adopted in the *User Interfaces Order* for digital apparatus and navigation devices to comply with the accessible user interfaces rules, including the requirement to provide an activation mechanism reasonably comparable to a button, key, or icon for certain accessibility features, to the requirement adopted here. Thus, consistent with the deadline in Section 79.109(c) of our rules, covered manufacturers must provide a simple and easy to use mechanism for accessing the secondary audio stream for audible emergency information no later than December 20, 2016.¹²³ Although apparatus manufacturers were silent in the record with regard to this issue, we believe that they will need some time for the design, testing, and implementation of a simple and easy to use activation mechanism for the secondary audio stream on covered apparatus. We believe that making the deadline consistent with that imposed in the *User Interfaces Order* will provide sufficient time for apparatus manufacturers to achieve these steps. In addition, we find that requiring manufacturers of such devices to incorporate the required accessibility features at the same time will ensure that the devices are updated on a uniform timetable. Such a uniform timeframe will prevent any consumer confusion as to the capabilities of their devices.¹²⁴

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

37. In this *Second Further Notice*, we seek comment on three issues: (i) whether we should adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether we should reconsider the Commission’s requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream; and (iii) whether we should require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

¹¹⁸ 47 C.F.R. § 79.105(a).

¹¹⁹ *User Interfaces Order*, 28 FCC Rcd at 17418, ¶ 147.

¹²⁰ See Wireless RERC *User Interfaces* Reply Comments at 10.

¹²¹ *Id.*

¹²² *Id.*

¹²³ 47 C.F.R. § 79.109(c).

¹²⁴ This will also reduce any consumer confusion that could arise from different deadlines relating to access to the secondary audio stream applying depending upon whether a particular device is covered by Section 203, 204, or 205 of the CVAA. We find that Wireless RERC’s proposed timeframe of May 26, 2015 has been rendered moot by the passage of time.

38. *Prioritization of Emergency Information on the Secondary Audio Stream.* We seek comment on how video programming providers and video programming distributors should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time.

39. Section 79.2(b)(2)(ii) of the Commission's rules requires that emergency information provided visually during programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide such information aurally.¹²⁵ In the *First Report and Order*, the Commission specified that it would not require a verbatim aural translation of textual emergency information, but that the information presented aurally must 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.¹²⁶ In addition, the Commission concluded 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.¹²⁷

40. In its recently-filed petition for temporary waiver of the emergency information rules, the National Association of Broadcasters ("NAB") indicated that "maps and other graphics almost always share the screen with other crawls" and, thus, broadcasters may encounter an issue with how to prioritize these sources of emergency information on the secondary audio stream to "ensur[e] that the most critical audible crawl reaches the public."¹²⁸ We seek comment on this issue. To what extent do broadcasters show more than one crawl or a crawl and a graphic conveying visual emergency information at the same time? In this scenario, do the crawls and graphics being shown simultaneously typically convey information about the same emergency situation?

41. Currently, our rule requires that the critical details about an emergency and how to respond to it must be conveyed aurally on the secondary stream to the same extent that this information is conveyed visually. If more than one crawl or a crawl and a graphic are shown on-screen at the same time, how can covered entities ensure that all of the critical details about the emergency and how to respond are conveyed aurally? Should we adopt rules that provide guidance to covered entities on how to prioritize emergency information conveyed aurally on the secondary audio stream when graphics or multiple crawls are used? For example, should we indicate that certain categories of emergency information should be prioritized based on the severity and proximity of the emergency and the potential impact on life, health, safety, and property? If multiple critical details about an emergency are broadcast simultaneously, should we prioritize them with respect to the requirement to provide audio information about their content (e.g., if a graphic or one crawl is providing information about areas affected by an emergency while another

¹²⁵ 47 C.F.R. § 79.2(b)(2)(ii).

¹²⁶ *First Report and Order*, 28 FCC Rcd at 4890-91, ¶ 23. "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).

¹²⁷ *First Report and Order*, 28 FCC Rcd at 4891-92, ¶ 24 (further noting that, even if a broadcaster employs text-to-speech ("TTS") technologies, the critical details of emergency information conveyed in a graphic display can be included in the text that will be converted to speech before the TTS conversion takes place).

¹²⁸ National Association of Broadcasters, Petition for Temporary Partial Exemption and Limited Waiver, MB Docket No. 12-107, at 10, n.11 (filed Mar. 27, 2015) ("NAB Waiver Petition"). See also *id.* at 13 (stating that "it is common for broadcasters to run a crawl of school closings, during both newscasts and non-newscast programming" and to also "run a second crawl on the screen during non-newscast programming with [] critical, potentially life-saving information, . . . [b]ut, with currently-available technology, the station would have no way of prioritizing the vital information . . . over the ongoing audible crawl of the school closings").

crawl is providing information about evacuation orders or shelter-in-place instructions), and if so, how? Or are these fact-specific judgements better left for broadcasters to make on a case-by-case basis?

42. Given the time-sensitive nature of emergency information, as well as quick-changing developments that may occur during the course of an emergency situation, should we require that *only* the highest priority emergency information needs to be conveyed when there are multiple sources of emergency information being shown on-screen at the same time? Or should any prioritization rules assume that all emergency information shown simultaneously must be conveyed aurally and, therefore, require that the highest priority emergency information should be conveyed before any lesser priority emergency information on the secondary audio stream? Should we rely on the good faith judgment of the broadcaster to determine what information qualifies as the highest priority? We seek comment on any other potential solutions or issues related to the prioritization of emergency information on the secondary audio stream, including how determinations of what is a higher or lower priority should be made.

43. *Inclusion of School Closing Information on the Secondary Audio Stream.* We also seek comment on whether the Commission should reconsider its requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream.

44. “Emergency information” is currently 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,” and 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.”¹²⁹ In the *First Report and Order*, the Commission declined to revise this definition of emergency information.¹³⁰ In particular, the Commission declined to adopt NAB’s recommendation to 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, finding that it would be inappropriate “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.”¹³¹ Thus, covered entities are required by the rule to ensure that visual emergency information regarding school closings and school bus schedule changes resulting from emergency situations aired during non-newscast programming is conveyed aurally on a secondary audio stream.¹³²

45. In its waiver petition, NAB requests a limited waiver of the requirement to include school closings in the audible crawl pending identification of an alternative solution by all interested

¹²⁹ 47 C.F.R. § 79.2(a)(2).

¹³⁰ *First Report and Order*, 28 FCC Rcd at 4895-96, ¶ 29.

¹³¹ *See id.* Although the Commission did not modify the definition of emergency information to delete school closings and school bus schedule changes that result from a current emergency from the list of examples, it found that covered entities have the option to air a 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 video-described programming, and to subsequently provide this information aurally on the secondary audio stream at the conclusion of the video-described programming. *Id.* at 4896-97, ¶ 31.

¹³² *See id.* at 4896, ¶ 31. The Commission left 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 and indicated that it would not sanction broadcasters or other covered entities for a reasonable exercise of their judgment in this regard. *Id.* at 4896, ¶ 31 & n.136. *But see* NAB Waiver Petition at 11, n.14 (“Rather than risking an investigation and potential fine, however, NAB respectfully submits that most broadcasters would err on the side of caution in determining whether a given school closing falls under the Audible Crawl Rule.”).

stakeholders.¹³³ NAB suggests that this issue should be referred to the Commission's Disability Advisory Committee's ("DAC") Video Programming subcommittee to develop an alternative solution.¹³⁴ According to NAB, "an audible crawl of school closings will be prolonged and inefficient" and could last hours, particularly given the vast number of schools typically within a station's viewing area, as well as the Commission's requirement that the crawl be repeated.¹³⁵ Further, NAB argues that currently there is no way for broadcasters to prioritize "immediately impactful emergency information – such as a hurricane warning – over a prolonged reading of school closings," and the school closing information could "interfere with the dissemination of more critical emergency information."¹³⁶ NAB also contends that viewers expect emergency information on the secondary audio stream to be "succinct and targeted" since they have to switch from the main program audio to hear it, and that information on school closings is available from other sources, including e-mail, text messages, radio, and Internet websites.¹³⁷

46. We seek comment on NAB's assertions. Given NAB's arguments, should the Commission revise its rule to provide that "school closings and changes in school bus schedules" resulting from emergency situations are not required to be conveyed aurally on the secondary audio stream? Or should we revise the rule to indicate that such information must be provided on the secondary audio stream only if no other emergency information is being conveyed audibly on the secondary audio stream at the same time? Should we revise the rule to provide that such information need only be conveyed once in full, rather than twice as currently required, given the potential lengthiness of the crawl? In addition, we seek comment on the benefits of providing information about school closings and changes in school bus schedules on the secondary audio stream for individuals who are blind or visually impaired, and whether the availability of other sources of this information is adequate. Although we seek comment on this issue, we encourage broadcasters and the disability community to work toward a mutually agreeable resolution in the interim through the DAC.¹³⁸

47. *Activation Mechanism for Emergency Information on the Secondary Audio Stream – MVPD Obligations.* We seek comment on whether we should require MVPDs to provide their customers with navigation devices that contain a simple and easy to use activation mechanism for accessing emergency information on the secondary audio stream. In the *Second Report and Order*, we conclude that manufacturers of apparatus covered by Section 79.105 of the Commission's rules must provide a mechanism that is simple and easy to use, such as one that is reasonably comparable to a button, key, or icon, for activating the secondary audio stream for audible emergency information pursuant to Section 203 of the CVAA.¹³⁹ Manufacturers must provide this functionality on covered apparatus by December

¹³³ See NAB Waiver Petition at 11-14.

¹³⁴ *Id.* at 11 & n.15.

¹³⁵ *Id.* at 12. Section 79.2(b)(2)(ii) of the Commission's rules requires that emergency information provided aurally on the secondary audio stream be conveyed in full at least twice 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. See 47 C.F.R. § 79.2(b)(2)(ii); *First Report and Order*, 28 FCC Rcd at 4892, ¶ 25.

¹³⁶ NAB Waiver Petition at 12-13.

¹³⁷ *Id.* at 13.

¹³⁸ We note that since adoption of the *Second Report and Order* the Media Bureau granted NAB's request that the Commission temporarily waive the requirement to aurally convey school closing information on the secondary audio stream in the context of the NAB Waiver Petition. See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Petitions for Waiver*, MB Docket Nos 12-107, 11-43, Memorandum Opinion and Order, DA 15-632 (MB rel. May 26, 2015).

¹³⁹ See *supra* Section III.B.2.

20, 2016.¹⁴⁰ Although covered apparatus, including navigation devices, will be required to have a simple and easy to use mechanism for activating the secondary audio stream by December 20, 2016, we want to ensure that compliant devices make it into the hands of MVPD customers promptly. Under Section 202 of the CVAA, the Commission has authority to promulgate regulations that require video programming distributors, including MVPDs,¹⁴¹ “to convey [] emergency information in a manner accessible to individuals who are blind or visually impaired.”¹⁴² We believe this provision gives us authority to require MVPDs to provide devices with a simple and easy to use activation mechanism because conveying audible emergency information on the secondary stream would not be “accessible to individuals who are blind or visually impaired” if those individuals cannot readily access it. We seek comment on that view, as well as whether any other statutory provisions grant the Commission authority to adopt such a requirement. Should MVPDs be required to provide navigation devices with a simple and easy to use activation mechanism for the secondary audio stream only upon request by a customer or should MVPDs be required to provide devices with this functionality to all customers? What time frame would be appropriate for requiring MVPDs to provide navigation devices with a simple and easy to use activation mechanism for the secondary audio stream? We seek comment on these or any other issues related to implementation of such a requirement.

48. In addition, we seek comment on whether we should require MVPDs to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services. In the *Second Report and Order*, we adopt rules requiring MVPDs to pass through a secondary audio stream containing audible emergency information when they permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD’s network as part of their MVPD services.¹⁴³ In particular, we conclude that MVPDs must ensure that any application or plug-in that they provide to consumers to access such programming is capable of passing through audible emergency information on a secondary audio stream.¹⁴⁴ Given that the record developed in this proceeding demonstrates that MVPDs control the ability of consumers to select and receive the secondary audio stream for linear programming provided through an MVPD application on mobile and other devices,¹⁴⁵ should we require MVPDs to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information on MVPD applications and plug-ins that allow consumers to view linear programming on mobile and other devices? As noted above, Section 202 of the CVAA directs the Commission to promulgate regulations that require video programming distributors, including MVPDs,¹⁴⁶ “to convey [] emergency information in a manner accessible to individuals who are blind or visually impaired.”¹⁴⁷ We believe this provision gives us authority to require MVPDs to provide a simple and easy to use activation mechanism on MVPD applications and plug-ins that allow consumers to view linear programming on mobile and other devices because conveying audible emergency information on the secondary stream would not be “accessible to individuals who are blind or visually impaired” if those individuals cannot readily access it. We seek comment on that view, as well as whether any other statutory provisions grant the Commission authority to adopt such a requirement. What time frame would be appropriate for requiring MVPDs to comply? In the *Second Report and Order*, we adopt a compliance deadline of two years after publication in the *Federal Register* for MVPDs

¹⁴⁰ See *supra* Section III.B.3.

¹⁴¹ See 47 C.F.R. § 79.1(a)(11).

¹⁴² 47 U.S.C. § 613(g)(2).

¹⁴³ See *supra* Section III.A.1.

¹⁴⁴ See *supra* Section III.A.2.

¹⁴⁵ See *supra* Section III.A.3.

¹⁴⁶ See 47 C.F.R. § 79.1(a)(11).

¹⁴⁷ 47 U.S.C. § 613(g)(2).

to pass through a secondary audio stream with audible emergency information for linear programming on tablets, smartphones, laptops, and similar devices. Should that deadline apply to the requirement for MVPDs to provide a simple and easy to use activation mechanism for the secondary audio stream? We seek comment on these or any other issues related to implementation of such a requirement.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

49. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹⁴⁸ the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to the *Second Report and Order* in MB Docket No. 12-107. The FRFA is set forth in Appendix C.

50. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) relating to the *Second Further Notice of Proposed Rulemaking* in MB Docket No. 12-107. The IRFA is set forth in Appendix D.

B. Paperwork Reduction Act

51. The *Second Report and Order* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

52. The *Second Further Notice of Proposed Rulemaking* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Congressional Review Act

53. The Commission will send a copy of the *Second Report and Order and Second 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).

D. Ex Parte Rules

54. We remind interested parties that this proceeding is treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁴⁹ 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

¹⁴⁸ *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”).

¹⁴⁹ 47 C.F.R. §§ 1.1200 *et seq.*

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 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

55. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,¹⁵⁰ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference **MB Docket No. 12-107** and may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies.¹⁵¹

- 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.

56. 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 Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

57. Availability of Documents. Comments and reply comments will be publically available online via ECFS.¹⁵² These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

¹⁵⁰ See 47 C.F.R. §§ 1.415, 1419.

¹⁵¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

¹⁵² Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

F. Additional Information

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

VI. ORDERING CLAUSES

59. 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 *Second Report and Order and Second Further Notice of Proposed Rulemaking* **IS ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*.

60. **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.

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

62. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Second Report and Order and Second 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 Nos. 12-107, 11-43**

American Cable Association
AT&T Services, Inc.*
Consumer Electronics Association*
Jose Cruz*
CTIA – The Wireless Association*
DIRECTV, LLC*
National Association of Broadcasters*
National Cable & Telecommunications Association*
Jeanette M. Schmoyer*
Telecommunications Industry Association*

Reply Comments filed in MB Docket Nos. 12-107, 11-43

Entertainment Software Association*
Information Technology Industry Council*
National Association of Broadcasters*
Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)*

Comments filed in MB Docket Nos. 12-107, 12-108

Alliance for Communications Democracy
Consumer Electronics Association*
DISH Network L.L.C. & EchoStar Technologies L.L.C.*
National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, and Telecommunication RERC
National Cable & Telecommunications Association*
Telecommunications Industry Association
Verizon & Verizon Wireless

Reply Comments filed in MB Docket Nos. 12-107, 12-108

Alliance for Communications Democracy
American Cable Association
American Foundation for the Blind & American Council of the Blind*
CenturyLink
Consumer Electronics Association*
Entertainment Software Association
Montgomery County, Maryland
National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing,

* Denotes comments cited in the *Second Report and Order*.

Cerebral Palsy and Deaf Organization, and Telecommunication RERC
National Cable & Telecommunications Association
Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)*
Telecommunications Industry Association

APPENDIX B

Final Rules

The Federal Communications Commission amends 47 CFR part 79 as follows:

PART 79 – Accessibility of Video Programming

1. The authority citation for part 79 continues 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 paragraph (b)(2)(ii) and adding paragraph (b)(6) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

* * * * *

(b) * * *

(2) * * *

(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 May 26, 2015 **except as provided in paragraph (b)(6) of this section**, 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.

* * * * *

(6) Beginning [INSERT DATE TWO YEARS FROM FEDERAL REGISTER PUBLICATION], multichannel video programming distributors must ensure that any application or plug-in that they provide to consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD’s network as part of their multichannel video programming distributor services is capable of passing through to consumers an aural representation of the emergency information (including the accompanying aural tone) on a secondary audio stream.

3. Amend § 79.105 by adding paragraph (d) and a note to paragraph (d) to read as follows:

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

* * * * *

(d) Beginning December 20, 2016, all apparatus subject to this section must provide a simple and easy to use mechanism for activating the secondary audio stream for audible emergency information.

NOTE TO PARAGRAPH (d): This paragraph places no restrictions on the importing, shipping, or sale of navigation devices that were manufactured before December 20, 2016.

APPENDIX C

Final Regulatory Flexibility Analysis for the *Second 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 into each of the *Further Notices of Proposed Rulemaking* (“*Further Notices*”) in this proceeding.² The Federal Communications Commission (“Commission”) sought written public comment on the proposals in the *Further Notices*, 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 Second Report and Order

2. In the *Second Report and Order*, we take additional steps under the authority of Sections 202 and 203 of the CVAA⁴ to make emergency information in video programming accessible to individuals who are blind or visually impaired.

3. First, the *Second Report and Order* concludes that multichannel video programming distributors (“MVPDs”) must pass through a secondary audio stream containing audible emergency information in accordance with Section 79.2 of the Commission’s rules⁵ when they permit consumers to access linear programming⁶ on tablets, smartphones, laptops, and similar devices over the MVPD’s network as part of their MVPD services. Increasingly, Americans are utilizing a wide range of devices in

¹ 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”).

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*; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107, 11-43, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, Appendix D (2013) (“*First Report and Order*”); *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, Appendix E (2013) (“*User Interfaces Order*”).

³ See 5 U.S.C. § 604.

⁴ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); 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).

⁵ 47 C.F.R. § 79.2.

⁶ The term “linear programming” is generally understood to refer to video programming that is prescheduled by the video programming provider. See *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, MB Docket No. 14-261, 29 FCC Rcd 15995, 16001, n.26 (2014) (“*MVPD Definition NPRM*”) (using the term “linear programming” “consistent with prior Commission use”) (citing *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, 4308, ¶ 14, n.34 (2010) (“The term ‘linear programming’ is generally understood to refer to video programming that is prescheduled by the programming provider.”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Notice of Inquiry, 29 FCC Rcd 1597, 1603, ¶ 15, n.23 (2014) (“A linear channel is one that distributes programming at a scheduled time. Non-linear programming, such as video-on-demand (‘VOD’) and online video content, is available at a time of the viewer’s choosing.”)).

addition to the television to view video programming,⁷ and a number of MVPDs now allow customers to view linear programming on second screen devices using applications or other technologies. The conclusion we make in the *Second Report and Order* ensures that individuals who are blind or visually impaired will be provided with accessible emergency information when they are watching linear programming over the MVPD's network as part of their MVPD services, regardless of whether they are viewing the programming on their television or on their tablet, smartphone, or similar device.

4. Second, the *Second Report and Order* requires manufacturers of apparatus subject to Section 79.105 of the Commission's rules⁸ to provide a mechanism that is simple and easy to use for activating the secondary audio stream to access audible emergency information. Individuals who are blind or visually impaired should not have to navigate through multiple levels of menus or take other time-consuming actions to activate the secondary audio stream when they hear the aural tone signaling that emergency information is being provided visually on the screen. In emergency situations, every second counts. Thus, we believe that in order for emergency information to be made fully accessible to individuals who are blind or visually impaired in accordance with Section 203 of the CVAA, manufacturers of covered apparatus must ensure that such individuals have a simple, easy to use mechanism to activate the secondary audio stream in order to hear emergency information.

B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA

5. No public comments were filed in response to the IRFA.

6. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

C. 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 *Second Report and Order*.⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹¹ A "small business concern" is one which: (1) is independently owned and operated; (2) is not

⁷ See, e.g., Nielsen, *Shifts in Viewing: The Cross-Platform Report Q2 2014* (Sept. 8, 2014), available at <http://www.nielsen.com/us/en/insights/reports/2014/shifts-in-viewing-the-cross-platform-report-q2-2014.html> (reporting that increased media consumption is driven "[p]rimarily [by] the growth in digital—both on computers and mobile devices" and noting that consumers "increasingly look for [content] on the go and on demand on their mobile devices."). See also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10678, ¶ 368 (2013) ("The proliferation of portable media devices with broadband IP capability has opened up new video distribution opportunities for MVPDs and [online video distributors] alike.").

⁸ 47 C.F.R. § 79.105. Covered apparatus include apparatus that are designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to Sections 79.2 and 79.3, are manufactured or imported for use in the United States, and use a picture screen of any size, subject to certain exemptions. See *id.* §§ 79.105(a)-(b).

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ *Id.* § 601(6).

dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹² Small entities that are directly affected by the rules adopted in the *Second Report and Order* include MVPDs and manufacturers of apparatus covered by Section 79.105 of the Commission's rules.

8. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category 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. 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."¹³ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.¹⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁵ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹⁶ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

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.¹⁷ Industry data shows that there were 1,141 cable companies at the end of June 2012.¹⁸ Of this total, all but 10 incumbent cable

(Continued from previous page) _____
¹¹ *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."

¹² 15 U.S.C. § 632.

¹³ U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

¹⁴ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

¹⁵ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹⁶ *Id.*

¹⁷ 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 Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹⁸ NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 at ¶ 24 (rel. July 22, 2013) ("15th Annual Competition Report").

companies are small under this size standard.¹⁹ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁰ Current Commission records show 4,945 cable systems nationwide.²¹ Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

10. Cable System Operators (Telecom Act Standard). 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."²² There are approximately 56.4 million incumbent cable video subscribers in the United States today.²³ Accordingly, an operator serving fewer than 564,000 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.²⁴ Based on available data, we find that all but 10 incumbent cable operators are small under this size standard.²⁵ 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.²⁶ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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,²⁷ which was developed for small wireline

¹⁹ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (*i.e.*, 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) ("*CALM Act Report and Order*") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

²⁰ 47 C.F.R. § 76.901(c).

²¹ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

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

²³ See NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

²⁴ 47 C.F.R. § 76.901(f); see Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

²⁵ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

²⁶ 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).

²⁷ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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,

(continued....)

businesses. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.²⁸ Census data for 2007 shows 3,188 firms in this category.²⁹ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.³⁰ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.³¹ Each currently offer subscription services. DIRECTV and DISH Network 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 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,³² which was developed for small wireline businesses. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.³³ Census data for 2007 shows

(Continued from previous page) _____

sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. 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.” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁸ 13 C.F.R. § 121.201; NAICS Code 517110.

²⁹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

³⁰ 13 C.F.R. § 121.201; NAICS code 517510 (2002).

³¹ See *15th Annual Competition Report*, at ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* ¶¶ 27, 110-11.

³² See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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. 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.” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³³ 13 C.F.R. § 121.201; NAICS Code 517110.

3,188 firms in this category.³⁴ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

13. 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.³⁵ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.³⁶ Census data for 2007 shows 3,188 firms in this category.³⁷ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

14. Open Video Services. 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.³⁸ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,³⁹ OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.⁴⁰ In this category, the SBA deems a wired telecommunications carrier to

³⁴ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

³⁵ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part 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. 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." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁶ 13 C.F.R. § 121.201; NAICS Code 517110.

³⁷ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

³⁸ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

³⁹ See 47 U.S.C. § 573.

⁴⁰ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part 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. 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." U.S.

(continued....)

be small if it has 1,500 or fewer employees.⁴¹ Census data for 2007 shows 3,188 firms in this category.⁴² Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁴³ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁴⁴ 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, again, at least some of the OVS operators may qualify as small entities.

15. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS)⁴⁵ and Educational Broadband Service (EBS)⁴⁶ to transmit video programming to subscribers. 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.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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

(Continued from previous page)

Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴¹ 13 C.F.R. § 121.201; NAICS Code 517110.

⁴² http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

⁴³ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

⁴⁴ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁴⁵ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See *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).

⁴⁶ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

⁴⁷ 47 C.F.R. § 21.961(b)(1).

⁴⁸ 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.

⁴⁹ *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).

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.⁵⁰ Auction 86 concluded in 2009 with the sale of 61 licenses.⁵¹ Of the 10 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.

16. 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, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category 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. 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."⁵² In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁵³ Census data for 2007 shows 3,188 firms in this category.⁵⁴ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁵⁵ 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.⁵⁶

17. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are

⁵⁰ *Id.* at 8296.

⁵¹ *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).

⁵² U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

⁵³ 13 C.F.R. § 121.201; NAICS Code 517110.

⁵⁴ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

⁵⁵ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

⁵⁶ 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).

included in the SBA's economic census category, Wired Telecommunications Carriers.⁵⁷ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁵⁸ Census data for 2007 shows 3,188 firms in this category.⁵⁹ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

18. 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."⁶⁰ 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.⁶¹ 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.

19. Competitive Local Exchange Carriers (CLECs), 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. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers.⁶² In this

⁵⁷ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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. 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.*" (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁵⁸ 13 C.F.R. § 121.201; NAICS Code 517110.

⁵⁹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

⁶⁰ 15 U.S.C. § 632.

⁶¹ 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).

⁶² See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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. 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.*" (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁶³ Census data for 2007 shows 3,188 firms in this category.⁶⁴ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

20. 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 communications equipment, and radio and television studio and broadcasting equipment.”⁶⁵ The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.⁶⁶ Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year.⁶⁷ Of those, 912 operated with fewer than 500 employees, and 27 operated with 500 or more employees.⁶⁸ Therefore, under this size standard, the majority of such establishments can be considered small.

21. Audio and Video Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.”⁶⁹ The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.⁷⁰ Census data for 2007 shows that there were 492 establishments in this category operated for part or all of the entire year.⁷¹ Of those, 488 operated with fewer than 500 employees, and four operated with 500 or more employees.⁷² Therefore, under this size standard, the majority of such establishments can be considered small.

⁶³ 13 C.F.R. § 121.201; NAICS Code 517110.

⁶⁴ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

⁶⁵ U.S. Census Bureau, 2012 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁶ 13 C.F.R. § 121.201; 2012 NAICS code 334220.

⁶⁷ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334220, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, 2012 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁰ 13 C.F.R. § 121.201; 2012 NAICS code 334310.

⁷¹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334310, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷² *Id.*

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

22. The *Second Report and Order* (i) concludes that MVPDs must pass through a secondary audio stream containing audible emergency information in accordance with Section 79.2 of the Commission's rules when they permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD's network as part of their MVPD services, and (ii) adopts new requirements applicable to manufacturers of apparatus covered by Section 79.105 of the Commission's rules pursuant to the authority in Section 203 of the CVAA.

23. With respect to the first issue, the *Second Report and Order* does not adopt a new regulatory regime, but rather finds that the existing emergency information requirements in Section 79.2 of the Commission's rules apply when an MVPD provides linear programming for viewing on mobile and other devices over the MVPD's network. Accordingly, there are no new reporting or recordkeeping requirements. There will, however, be compliance requirements for MVPDs, including small MVPDs. Specifically, MVPDs must pass through a secondary audio stream containing audible emergency information when they permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD's network as part of their MVPD services. As part of this obligation, MVPDs must ensure that any application or plug-in that they provide to consumers to access such programming is capable of passing through audible emergency information on a secondary audio stream.

24. With respect to the second issue, the *Second Report and Order* adopts new compliance requirements for manufacturers of covered apparatus, including small entities. Specifically, manufacturers of apparatus subject to Section 79.105 of the Commission's rules must provide a mechanism that is simple and easy to use for activating the secondary audio stream to access audible emergency information on covered apparatus. The provisions for achievability, purpose-based waiver, and exemptions in Section 79.105 of the Commission's rules apply to the requirement that covered apparatus provide a simple and easy to use activation mechanism for the secondary audio stream.⁷³

25. No commenter provided specific information about the costs and administrative burdens associated with the rules adopted in the *Second Report and Order*. However, we note that the rule we adopt pursuant to Section 203 of the CVAA – which requires manufacturers of apparatus subject to Section 79.105 of the Commission's rules to provide a mechanism that is simple and easy to use for activating the secondary audio stream to access audible emergency information – affords covered entities flexibility in how they implement this requirement.

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

26. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.⁷⁴

27. The rules adopted in the *Second Report and Order* may have an economic impact in some cases, and that impact may affect small entities. Although the Commission has considered alternatives where possible, as directed by the RFA, to minimize economic impact on small entities, we emphasize that our action is governed by the congressional mandate contained in Sections 202 and 203 of the CVAA.

⁷³ See 47 C.F.R. §§ 79.105(b)(1)-(2) (exempt apparatus), 79.105(b)(3) (achievability), 79.105(b)(4) (purpose-based waivers).

⁷⁴ 5 U.S.C. § 604(a)(6).

28. In crafting its new requirements, the Commission provided reasonable timeframes within which covered entities may come into compliance, as requested in the record.

29. In addition, with regard to the accessibility requirements adopted pursuant to Section 203 of the CVAA, in certain instances, the Commission may grant exemptions to the rules where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense).⁷⁵ We note that two of the four statutory factors that the Commission will consider in determining achievability are particularly relevant to small entities: the nature and cost of the steps needed to meet the requirements, and the technical and economic impact on the entity's operations. In addition, apparatus designed to receive and play back video programming transmitted simultaneously with sound must comply with Section 203 requirements only to the extent they are "technically feasible."⁷⁶ Thus, covered manufactures, including small entities, may raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or to file a request for a ruling under Section 1.41 of the Commission's rules as to technical feasibility before manufacturing or importing the product.⁷⁷ As an additional means of reducing the costs of compliance, apparatus manufacturers may use alternate means of compliance with the rules adopted pursuant to Section 203.⁷⁸ 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 alternative satisfies the statutory requirements. The Commission will consider such requests on a case-by-case basis. Further, the rule also allows for certain purpose-based waivers and exemptions.⁷⁹ These processes will allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis and to modify the application of the rules to accommodate individual circumstances, which can reduce the costs of compliance for these entities.

30. Overall, we believe we have appropriately considered both the interests of individuals with disabilities and the interests of the entities who will be subject to the rules, including those that are smaller entities. The requirements adopted by the Commission today help ensure that the critical details of an emergency are made accessible to individuals who are blind or visually impaired, thus significantly benefiting consumers and serving the stated public interest goal of the CVAA.

F. Report to Congress

31. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁸⁰ In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.⁸¹

⁷⁵ See 47 C.F.R. § 79.105(b)(3).

⁷⁶ See 47 U.S.C. § 303(u).

⁷⁷ See *First Report and Order*, 28 FCC Rcd at 4917-18, ¶ 66.

⁷⁸ See *id.* at 4923, ¶ 75.

⁷⁹ See 47 C.F.R. §§ 79.105(b)(1)-(2), 79.105(b)(4).

⁸⁰ See 5 U.S.C. § 801(a)(1)(A).

⁸¹ See *id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis for the *Second Further Notice of Proposed Rulemaking*

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 economic impact on small entities by the policies and rules proposed in the *Second 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 as specified in the *Second Further Notice*. The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *Second Further Notice* and this IRFA (or summaries thereof) will be published in the *Federal Register*.³

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

2. In the *Second Further Notice*, the Commission seeks comment on three issues: (i) whether to adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether to reconsider the Commission’s requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream; and (iii) whether to require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

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 Proposed Rules 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 rules adopted in the *Second Report and Order*.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A “small business concern” is one which: (1) is independently owned and operated; (2) is not

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).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *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

(continued....)

dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷ Small entities that are directly affected by the rules adopted in the *Second Report and Order* include video programming providers and video programming distributors covered by Section 79.2 of the Commission's rules.

5. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category 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. 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."⁸ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁹ Census data for 2007 shows 3,188 firms in this category.¹⁰ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

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.¹¹ Industry data shows that there were 1,141 cable companies at the end of June 2012.¹² Of this total, all but 10 incumbent cable companies are small under this size standard.¹³ In addition, under the Commission's rate regulation rules, (Continued from previous page) _____ 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."

⁷ 15 U.S.C. § 632.

⁸ U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

⁹ 13 C.F.R. § 121.201; NAICS Code 517110.

¹⁰ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹¹ 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 Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹² NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 at ¶ 24 (rel. July 22, 2013) ("*15th Annual Competition Report*").

¹³ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all

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a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁴ Current Commission records show 4,945 cable systems nationwide.¹⁵ Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

7. Cable System Operators (Telecom Act Standard). 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.”¹⁶ There are approximately 56.4 million incumbent cable video subscribers in the United States today.¹⁷ Accordingly, an operator serving fewer than 564,000 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 Based on available data, we find that all but 10 incumbent cable operators are small under this 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 Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. 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,²¹ which was developed for small wireline

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but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) (“*CALM Act Report and Order*”) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

¹⁴ 47 C.F.R. § 76.901(c).

¹⁵ The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

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

¹⁷ See NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

¹⁸ 47 C.F.R. § 76.901(f); see Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

¹⁹ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

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 See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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. 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*

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businesses. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.²² Census data for 2007 shows 3,188 firms in this category.²³ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.²⁴ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.²⁵ Each currently offer subscription services. DIRECTV and DISH Network 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.

9. 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,²⁶ which was developed for small wireline businesses. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.²⁷ Census data for 2007 shows 3,188 firms in this category.²⁸ Of these 3,188 firms, only 44 had 1,000 or more employees. While we

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exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²² 13 C.F.R. § 121.201; NAICS Code 517110.

²³ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

²⁴ 13 C.F.R. § 121.201; NAICS code 517510 (2002).

²⁵ See *15th Annual Competition Report*, at ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* ¶¶ 27, 110-11.

²⁶ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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. 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.” (Emphasis added to text relevant to satellite services.)* U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁷ 13 C.F.R. § 121.201; NAICS Code 517110.

²⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

10. 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.²⁹ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.³⁰ Census data for 2007 shows 3,188 firms in this category.³¹ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

11. Open Video Services. 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.³² The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,³³ OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.³⁴ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.³⁵ Census data for 2007 shows 3,188 firms in this category.³⁶

²⁹ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part 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. 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." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁰ 13 C.F.R. § 121.201; NAICS Code 517110.

³¹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

³² 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

³³ See 47 U.S.C. § 573.

³⁴ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part 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. 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." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵ 13 C.F.R. § 121.201; NAICS Code 517110.

Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.³⁷ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.³⁸ 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, again, at least some of the OVS operators may qualify as small entities.

12. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS)³⁹ and Educational Broadband Service (EBS)⁴⁰ to transmit video programming to subscribers. 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.⁴¹ 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.⁴² 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.⁴³ 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

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³⁶ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

³⁷ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

³⁸ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

³⁹ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See *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).

⁴⁰ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

⁴¹ 47 C.F.R. § 21.961(b)(1).

⁴² 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.

⁴³ *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).

million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁴⁴ Auction 86 concluded in 2009 with the sale of 61 licenses.⁴⁵ Of the 10 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.

13. 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, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category 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. 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."⁴⁶ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁴⁷ Census data for 2007 shows 3,188 firms in this category.⁴⁸ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁴⁹ 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.⁵⁰

14. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.⁵¹ In this category,

⁴⁴ *Id.* at 8296.

⁴⁵ *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).

⁴⁶ U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

⁴⁷ 13 C.F.R. § 121.201; NAICS Code 517110.

⁴⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

⁴⁹ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

⁵⁰ 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).

⁵¹ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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,

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the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁵² Census data for 2007 shows 3,188 firms in this category.⁵³ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

15. 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.”⁵⁴ 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.⁵⁵ 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.

16. Competitive Local Exchange Carriers (CLECs), 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. These entities are included in the SBA’s economic census category, Wired Telecommunications Carriers.⁵⁶ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁵⁷ Census data for 2007 shows 3,188 firms in this category.⁵⁸ Of these 3,188 firms, only 44

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sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. 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.* (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁵² 13 C.F.R. § 121.201; NAICS Code 517110.

⁵³ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

⁵⁴ 15 U.S.C. § 632.

⁵⁵ 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).

⁵⁶ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers 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. 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.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁵⁷ 13 C.F.R. § 121.201; NAICS Code 517110.

had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

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

17. In this section, we describe the reporting, recordkeeping, and other compliance requirements proposed in the *Second Further Notice* and consider whether small entities are affected disproportionately by any such requirements.

18. In the *Second Further Notice*, the Commission seeks comment on three issues: (i) whether to adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether to reconsider the Commission’s requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream; and (iii) whether to require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

19. With respect to the first issue, the *Second Further Notice* asks whether the Commission should adopt rules to provide clarity to covered entities on how to prioritize emergency information on the secondary audio stream when complying with the requirements in Section 79.2. There are no new reporting or recordkeeping requirements proposed. There will, however, be compliance requirements for video programming providers and video programming distributors, including small entities. Specifically, covered entities will need to comply with any rules that govern how to prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time.

20. With respect to the second issue, the *Second Further Notice* seeks comment on whether the Commission should reconsider the requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream. There are no new reporting, recordkeeping, or compliance requirements proposed.

21. With respect to the third issue, the *Second Further Notice* asks whether the Commission should require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services. This would impose compliance requirements on MVPDs, including small MVPDs. In addition, there may be reporting or recordkeeping obligations. For example, the Commission may decide to impose a notification requirement so that consumers are aware of the availability of accessible navigation devices that include a simple and easy to use activation mechanism for the secondary audio stream.

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

(Continued from previous page) _____

⁵⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

22. 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 and 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.⁵⁹

23. Two of the rule changes contemplated by the *Second Further Notice* would not impose a significant impact on small entities. The Commission is considering a rule that would provide guidance to covered entities on how to prioritize emergency information on the secondary audio stream when there are multiple sources of visual emergency information shown on-screen during non-news-cast programming, and the costs and burdens associated with such a rule are expected to be *de minimis* or non-existent. Further, the Commission is considering whether to reconsider the requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream. Such a rule change would minimize the costs and burdens on regulated entities of all sizes.

24. The Commission is also seeking comment on whether to require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services. This proposed rule may have an economic impact in some cases, and that impact may affect small entities. Although the Commission has considered alternatives where possible, as directed by the RFA, to minimize economic impact on small entities, we emphasize that our action is governed by the congressional mandate contained in Section 202 of the CVAA.

25. Based on these considerations, we believe that, in proposing additional rules in the *Second Further Notice*, we have appropriately considered both the interests of blind or visually impaired individuals 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.”⁶⁰

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

26. None.

⁵⁹ 5 U.S.C. § 603(c)(1)-(c)(4).

⁶⁰ 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).

**STATEMENT OF
CHAIRMAN TOM WHEELER**

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, Second Report and Order and Second Further Notice of Proposed Rulemaking.

Universal access and public safety are two of the core values that underpin our communications networks. Today, we advance both values by adopting rules to make sure individuals who are blind or visually impaired get critical details of an emergency shown on television in a timely manner.

In an emergency, every second counts. If a tornado warning appears on your television in an on-screen crawl, that can give you the time you need to seek shelter, if you can read it.

As Nancy Rumbolt-Trzinski of Pittsfield, Massachusetts, wrote to the Commission, “Information needs to be provided visually as well as in audio form so everyone can be as prepared as possible.” Information access is a right and there should be no question as to implementation of policies ensuring equal and accessible dissemination of important and necessary information so all people can be prepared.”

For Nancy, this is not just a matter of principle or policy; this is about being able to take care of herself and her loved ones during emergencies. Nancy is blind. During Hurricane Irene, the roof was blown off of her home. Unfortunately, because she couldn’t see the television screen, Nancy was not able to access the same emergency information that her neighbors had.

In 2013, the Commission adopted rules to ensure that individuals who are blind or visually impaired have access to visual emergency information when it is shown during non-newscast television programming. For example, if there is an on-screen crawl, an aural presentation such as three tones will notify blind viewers to switch to a secondary audio stream to hear the alert.

More and more Americans today watch programming – whether it be local news, a network sitcom, or public television events - on their laptops and smartphones in a service offered by their service provider. The fact that the provider has moved delivery to a second screen should not eliminate the responsibility to provide emergency alerts.

That’s why the Commission moves today to extend that accessibility to emergency alerts to television programming being watched on these “second screens.”

The new rules require that emergency information be made accessible on a secondary audio stream on tablets, smartphones, laptops, and similar devices when subscription television providers, such as cable and satellite operators, permit consumers to access scheduled programming over their networks using an app on these devices. Making this work is not rocket science – most of these devices already have the capability to decode secondary audio streams. Operators need only ensure their apps leverage these built-in capabilities to make emergency information accessible.

The new rules also require that the equipment used to receive and play back television programming, such as set-top boxes, have a simple and easy to use mechanism to switch from the main program audio to the secondary audio stream to hear audible emergency information. It should not be necessary for a blind person to go through multiple menus in an emergency to access essential information.

We also adopt a Second Further Notice of Proposed Rulemaking seeking comments on additional issues related to the accessibility of emergency information, such as how to prioritize emergency information if there is more than one on-screen announcement.

I hope and expect that these new rules will enable individuals who are blind or visually impaired to more quickly respond to time-sensitive emergency situations.

**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, Second Report and Order and Second Further Notice of Proposed Rulemaking.

When Congress enacted the Twenty-First Century Communications and Video Accessibility Act (CVAA) in 2010, I joined a broad community of public interest and industry groups in celebrating its intent: to ensure that we leverage technology so that people with disabilities are not left behind. Today, the Commission takes another important step towards successful implementation of this law.

Individuals who are blind and visually impaired have been able to enjoy information and entertainment programming via audio description services since its invention in 1981. Making video programming accessible is important not only to enjoy the latest iteration of *Grey's Anatomy*, *Game of Thrones*, or to stay current through news and information programming; it is important because our screens are able to transmit emergency alerts and other potentially life-saving messages. With today's item, we are addressing another critical piece of the emergency accessibility challenge: ensuring that information that appears on the screen simultaneously with regular programming, for example, an emergency alert crawl is capable of being understood by those who are blind or visually impaired.

I support today's item because it properly interprets our authority, under Sections 202 and 203 of the CVAA, to (1) make linear programming accessible to blind and visually impaired customers, through a secondary audio stream via laptop, smartphone, tablet, or other device, and (2) ensure the accessibility of that secondary audio stream via a "simple and easy to use" activation mechanism. Some may say that the broad authority provided to the Commission in Section 203 -- to make emergency information accessible for the blind or visually impaired -- is not sufficiently specific to allow us to accomplish this second goal. In my opinion, access to linear programming is only valuable when it is provided in a manner that makes it quickly available in an emergency. I believe we would frustrate the intent of the statute if we fail to accomplish this goal. To borrow a quote from the American Federation of the Blind and American Council of the Blind, "it is imperative that the Commission...ensure ease of use so that consumers are not confounded by avoidable technological barriers at the very time when time is of the essence."

Some cable providers have expressed concern about having to make the secondary audio stream available on devices used outside of the home. I have carefully considered this concern and I am persuaded that the approach crafted here, which limits this requirement to programming accessed "over the [MVPDs] network" rather than "over the Internet," provides regulatory clarity to consumers and industry in a way that advances the public interest. The Second Further Notice seeks comment on recommendations in the record that, I believe, will help to address any unintended challenges that could complicate the implementation of the CVAA, such as prioritizing emergency information and determining whether to reconsider our requirement that "school closings and changes in school bus schedules," be conveyed as a part of this audio stream.

Finally, while I understand that there are complexities involved in making the necessary technological modifications to implement the directives of this Report and Order, I believe that the two-year timeline provided is sufficient and I support the report's call for MVPDs not to wait that long, if it can be at all avoided. There is too much at stake. I want to thank the talented staff of the Consumer and Governmental Affairs Bureau and the Media Bureau for their very hard work on this item.

**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, Second Report and Order and Second Further Notice of Proposed Rulemaking.

The future of watching does not look like the past. Gathering around the glow of a bulky television set encased in a walnut cabinet has given way to sitting before slim models mounted on the wall. But those sleek screens on the wall are not the only game in town. That's because the number of screens around us has multiplied and we now expect to view video on any device, anytime, and anywhere.

But with so much change, some things stay the same. When emergency strikes, we still need access to information. We still need the news that will help keep us safe. That is why I support today's Order and Rulemaking. It updates our policies to reflect the way we watch now—and ensures that the blind and visually impaired are able to receive emergency information when they watch linear programming on screens both big and small. Moreover, it means those who are disabled will be able to do so simply, without having to navigate through multiple menus or complicated user interfaces in order to hear time-sensitive emergency information.

This approach is consistent with the Twenty-First Century Communications and Video Accessibility Act and in the end it does something strikingly simple—it extends opportunity and access in the digital age. Thank you to the Media Bureau and the Disabilities Rights Office for your efforts.

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND DISSENTING IN PART**

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, Second Report and Order and Second Further Notice of Proposed Rulemaking.

When disaster strikes, every American must have access to emergency information. For example, when a tornado warning is announced in my home state of Kansas and residents are told to take cover, that message must reach everyone in the twister's path. Mother Nature doesn't discriminate between those who can see and those who are visually impaired.

For this reason, I was pleased two years ago to support rules implementing the Twenty-First Century Communications and Video Accessibility Act (CVAA) by requiring video programmers and distributors to make emergency information accessible to those who are blind or visually impaired.¹ Specifically, we required that when programmers and distributors convey emergency information visually, such as through a crawl on the television screen, they must also use a secondary audio stream to convey that information.

I am glad that we are extending our rules today and ensuring that consumers will receive that secondary audio stream if they access a multichannel video programming distributor's (MVPD's) programming on a tablet, laptop, or similar device. This decision again makes sense. Whether you're using a 65-inch curved Samsung Smart TV or an iPad mini, your need for timely emergency information is the same.

Critically, this decision is consistent with the text of the CVAA. The statute's provisions regarding emergency information make no distinction between programming that is viewed on a traditional television and programming that is viewed on a "second screen," such as a tablet or smartphone. The obligation to make emergency information accessible to those who are blind or visually impaired still applies.

Moreover, it is important to note that the rules we adopt today do not cover video programming distributed over the Internet. Rather, they only pertain to programming distributed over an MVPD's network as part of an MVPD service. Applying our emergency information rules to over-the-top video programming would raise statutory and technical concerns that are not necessary to address here. Those difficult issues are left for another day.

Unfortunately, I am not able to support all of the rules the Commission adopts. Specifically, I must dissent from the requirement that manufacturers of televisions, set-top boxes, and other covered devices include in those apparatuses a mechanism for activating the secondary audio stream for emergency information that is reasonably comparable to a button, key, or icon.

I am doing so for one reason and one reason alone: The Commission does not have the legal authority to impose such a mandate. To be clear, I am not taking a position on the merits of such a requirement, and I am certain that those supporting it are well-intentioned. But at the end of the day, my foremost obligation as a Commissioner is to implement the laws as Congress has written them, not to rewrite statutes to conform to my own policy preferences.

¹ *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. 12-108, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4971 (2013) (Statement of Commissioner Ajit Pai).

In the CVAA, Congress specifically addressed under what circumstances apparatus manufacturers and MVPDs must provide consumers with a mechanism that is reasonably comparable to a button, key, or icon for activating accessibility features. In section 204, it required that one set of devices include a mechanism for activating closed captioning and video description capability.² And in section 205, it required that another set of devices (namely, navigation devices) include a mechanism for activating closed captioning capability.³ But nowhere does the CVAA mention anything about devices including a mechanism for activating audible emergency information capability.⁴ The Commission simply pulls such a mandate out of thin air.

To be sure, this item purports to ground the requirement in section 203's language requiring an apparatus to "have the capability to decode and make available emergency information . . . in a manner that is accessible to individuals who are blind or visually impaired."⁵ But this claim withers upon further examination.

First, the Commission's position is inconsistent with the structure of the CVAA. That statute has two entire sections, 204 and 205, devoted to how blind and visually impaired individuals interact with devices, such as through on-screen text menus and guides as well as mechanisms for activating accessibility features⁶—provisions, incidentally, that the Commission concedes will make it easier for them to activate the secondary audio stream containing emergency information.⁷ But those provisions contain no mandate pertaining to emergency information. Section 203, by contrast, addresses the capabilities that devices must have, not the means of activating those capabilities. Indeed, the title of the section is "Closed Captioning Decoder and Video Description *Capability*."⁸ For example, section 203 requires devices to "have the capability to decode and make available the transmission and delivery of video description services." The means of activating that capability, however, is addressed in section 204. Given this critical distinction between the subject matter covered by section 203, on one hand, and sections 204 and 205, on the other, it strains credulity to suggest that Congress hid the mechanism for activating audible emergency capability in section 203.

Second, the Commission's position conflates the concept of an accessibility feature with a mechanism for activating that accessibility feature. Section 203 requires devices to "have the capability to decode and make available emergency information . . . in a manner that is accessible to individuals who are blind or visually impaired."⁹ And for purposes of the statute, emergency information that is presented on a secondary audio stream is made accessible to those who are blind or visually impaired because it can be heard. The CVAA, however, distinguishes between such an accessibility feature and the mechanism for

² See 47 U.S.C. § 303(aa)(3).

³ See 47 U.S.C. § 303(bb)(2).

⁴ See *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992, 999 & n.5 (D.C. Cir. 2013) (discussing the *expressio unius* canon of statutory construction, which is "a canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative" (quoting BLACK'S LAW DICTIONARY 661 (9th ed. 2009))); *National Ass'n of Broadcasters v. FCC*, 569 F.3d 416, 421 (D.C. Cir. 2009) (stating "the general presumption that omission is intentional where Congress has referred to something in one subsection but not in another").

⁵ See 47 U.S.C. § 303(U)(1)(c).

⁶ Pub. L. No. 111-260, §§ 204, 205, 124 Stat. 2751 (2010).

⁷ See *Second Report and Order and Second Further Notice of Proposed Rulemaking* at para. 30.

⁸ Pub. L. No. 111-260, § 203, 124 Stat. 2751 (2010) (emphasis added).

⁹ See 47 U.S.C. § 303(U)(1)(c).

activating it. Section 204, for example, states that “control of appropriate built-in apparatus functions” must be “*accessible* and usable by individuals who are blind and visually impaired.”¹⁰ This might mean, among other things, that you can control the device’s functions through voice commands. Section 204 then goes on to say that a device must include a mechanism reasonably comparable to a button, key, or icon, for activating closed captioning and video description features. But such a requirement would be superfluous if the mandate to make built-in functions “accessible” empowered the Commission to mandate a mechanism reasonably comparable to a button, key, or icon for activating those features. Again, the accessibility feature itself and the mechanism for activating the accessibility feature are analytically distinct under the statute.¹¹

Third, the Commission’s action today eviscerates the statutory distinction between the mechanism reasonably comparable to a button, key, or icon required by section 204 and the one mandated in section 205. Recall that the mechanism mandated by section 204 must activate closed captioning and video description capabilities. Therefore, requiring a mechanism reasonably comparable to a button, key, or icon to activate the secondary audio stream for emergency information for devices covered by section 204 is duplicative. This is because the mechanism that will activate video description capability will also activate the emergency information capability since both are found on the same secondary audio stream. However, today’s item will have an impact on the separate set of devices covered by section 205. This is because section 205 mandates that navigation devices have a mechanism reasonably comparable to a button, key, or icon for activating closed captioning capability, *but not video description*. Following today’s order, however, navigation devices will have to include a mechanism for activating the secondary audio stream for emergency information, and it just so happens that this same mechanism will also be able to activate the video description feature found on that same secondary audio stream. The Commission is thus effectively transforming the mandate found in section 205 to mirror that of section 204, notwithstanding the different language used in the two statutory provisions. This, in my view, is unlawful. The Commission may not slip through the back door what Congress prevented it from doing through the front door.

Turning from the rules to the Second Further Notice of Proposed Rulemaking, my view is once again mixed. I support asking for comment on whether the Commission should adopt rules governing how emergency information conveyed on secondary audio streams should be prioritized, and if so, how. I similarly welcome whether we should reconsider whether our definition of emergency information should include school closings and changes in school bus schedules. But I respectfully dissent when it comes to seeking comment on whether we should require MVPDs to supply customers with navigation devices that contain a mechanism reasonably comparable to a button, key, or icon for accessing emergency information on the secondary audio stream and if we should require MVPDs to provide such a mechanism when they permit subscribers to view linear programming on tablets, smartphones, and similar devices. For the reasons stated above, I cannot agree with the item’s claim that the Commission has the legal authority to implement such mandates.

¹⁰ 47 U.S.C. § 303(aa)(1) (emphasis added).

¹¹ To be sure, the Commission contends that Congress might not have been aware of the need for there to be a mechanism for activating emergency information capability because the Commission could have chosen to require emergency information to be audible on the primary audio stream. *Second Report and Order and Second Further Notice of Proposed Rulemaking* at para. 29. But the Commission marshals no evidence in support of its fanciful theory, and the idea of requiring emergency information to be audible on the primary audio stream, where it would interrupt programming, was, in fact, never seriously considered by the Commission.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

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, Second Report and Order and Second Further Notice of Proposed Rulemaking.

I support this Order's goal of making emergency information in video programming accessible to individuals who are blind or visually impaired. In particular, I am willing to support the requirement that MVPDs should make this audible emergency information available when a consumer is viewing "linear" programming on a device other than a television via an MVPD's network.¹ The relevant industries are willing to make this change, which will help facilitate the process.

I am concerned and therefore dissent on the portions of the item that play on our points of agreement to stretch beyond our statutory authority to enact unnecessarily prescriptive user interface engineering. Specifically, the item copies and pastes the statutory language in Sections 204 and 205 of Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") requiring an activation mechanism for certain other accessibility functions into Section 203, mandating top-level user interface priority for a function never singled out by Congress for this treatment. Similarly, it should come as no surprise that I also dissent from the NPRM's suggestions that MVPDs subsequently provide devices with the new mechanism to all of their customers on a short time frame, or that we should dictate a similar activation mechanism within MVPD-provided applications or plug-ins.

Further, I am at a loss to understand the denial to incorporate a simple tentative conclusion into the discussion on school closing information in the secondary audio stream. I think we all know the direction this discussion is going: there is sufficient evidence that such lengthy recitations can easily overwhelm the secondary audio stream and interfere with the dissemination of more critical emergency information at exactly the wrong time. The question is why we would withhold a tentative conclusion in this instance when we seem so eager to include tentative conclusions elsewhere.

Overall, I would hope that the Commission can turn to ways to work with the industry to solve problems or provide solutions in a consistent way. Numerous interactions I have had over the last many months, such as Samsung's demonstration just a few days ago and seeing the new products at the cable industry's annual expo, highlight an industry putting a lot of time, talent, and investment into making the benefits of its products accessible to all, and pushing the edge with technological innovations far outside the boundaries of the Commission's mandates. In some instances, they are seeking to use the technology as a market differentiator. But as industry complies with past mandates, shouldn't there be some assurance that these efforts will continue to be recognized for having addressed the problems they were supposed to address? For example, having already adopted rules requiring audible accessibility of on-screen text menus and guides, the Commission now completely discounts their utility and mandates a different mechanism to access the second stream.

All in all, the item is in a relatively good place on the first part and I will support that portion.

¹ My willingness to support the use of linear in this instance should not be seen as my acceptance of such a structure in the Commission's MVPD OTT item.