

**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.<sup>1</sup> 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.

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<sup>1</sup> 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.