

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**JOINT PETITION FOR EXTENSION OF LIMITED WAIVER OF THE
AMERICAN COUNCIL OF THE BLIND, THE AMERICAN FOUNDATION FOR THE BLIND,
AND THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction and Summary

Pursuant to 47 C.F.R. § 1.3, the American Council of the Blind (ACB),¹ the American Foundation for the Blind (AFB),² and the National Association of Broadcasters (NAB)³ (collectively, Petitioners) respectfully request a limited extension of the Commission’s May 26, 2015 waiver of the rules requiring broadcasters to aurally describe visual, non-textual emergency information (e.g., radar maps).⁴ Petitioners support the goal of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to improve the ability of individuals who are blind or visually impaired, or deaf or hard of hearing, to enjoy video

¹ The American Council of the Blind (ACB) is a leading national nonprofit organization that represents the interests of blind and visually impaired people throughout the United States, with tens of thousands of members from across the country who belong to more than 70 state and special interest affiliates.

² The American Foundation for the Blind removes barriers, creates solutions, and expands possibilities so people with vision loss can achieve their full potential.

³ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

⁴ 47 C.F.R. § 79.2(b)(2)(ii); *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description: Implementation of Twenty-First Century Communications and Video Accessibility Act of 2010, Petitions for Waiver*, MB Docket Nos. 12-107 and 11-43, Memorandum Opinion and Order, 30 FCC Rcd 5012 (2015) (Waiver Order).

programming.⁵ During the Commission's multi-year effort to implement the CVAA, Petitioners have demonstrated this commitment by developing mechanisms and best practices for enhancing access to video programming,⁶ and partnering with Commission staff to educate viewers and industry, among other actions.

However, compliance with certain obligations intended to improve accessibility to video programming has proven impossible due to circumstances beyond broadcasters' control. Specifically, broadcasters remain incapable of aurally describing visual information in emergency crawls because no such automated solution exists. Petitioners thus request that the Commission extend the current 18-month waiver of this obligation, which expires on November 26, 2016, for an additional 18 months, to allow the Commission, broadcasters, accessibility advocates and other stakeholders to work with third-party vendors on the development of a viable solution.

II. Background

Section 202 of the CVAA required the Commission to adopt rules requiring that emergency information be conveyed in a manner that is accessible to individuals who are blind or visually impaired.⁷ In April 2013, the Commission implemented this mandate by requiring the use of a secondary audio stream (SAP) to transmit emergency information aurally, when such information is broadcast visually during programming other than newscasts, such as in a crawl.⁸ In particular, the rules state that such information

⁵ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (CVAA or Act); 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); 47 C.F.R. § 79.3.

⁶ See, e.g., 47 C.F.R. § 79.1(k) (Closed Captioning of Televised Video Programming Best Practices).

⁷ 47 U.S.C. § 613(g)(2).

⁸ *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 Twenty-First Century*

“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. . . . 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.”⁹

The Commission specified that this SAP approach to describing *textual* emergency information also applied to emergency information provided *visually*, such as maps and other moving graphics.¹⁰ The Commission further stated that broadcasters must provide an aural description of this visual information in a way that accurately and effectively conveys the critical details regarding the emergency and how to respond.¹¹ The effective date for the requirement to aurally describe both textual and visual information was set for May 26, 2015.

In March 2015, NAB filed a petition for limited waiver of these requirements seeking a six month extension for compliance with obligation to aurally describe textual information, and 18 months for visual information, given the myriad challenges to compliance.¹² First, NAB explained that implementing the rule for text-based emergency information required stations to convert emergency crawl graphics into audio, route that audio through their facilities, and encode that audio onto a secondary audio stream for broadcast.¹³ NAB noted that the graphics for an emergency crawl may originate from a variety of sources, including the news room, the weather center, or a station’s emergency alert system (EAS)

Communications and Video Accessibility Act of 2010, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (Audible Crawl Order).

⁹ 47 C.F.R. § 79.2(b)(2)(ii).

¹⁰ Audible Crawl Order, 28 FCC Rcd at 4880-81.

¹¹ *Id.* at 4891.

¹² Petition for Temporary Partial Exemption and Limited Waiver of the National Association of Broadcasters, MB Docket No. 12-107 (Mar. 27, 2015) (NAB Petition).

¹³ *Id.* at 5.

equipment.¹⁴ In addition, most stations use more than one system to provide textual information, and the systems utilized often varies depending on the situation. Given these difficulties as well as unforeseen delays in the manufacturing of a technical solution, the Commission extended the deadline for complying with the audible crawl rule for text-based alerts by six months.¹⁵

The situation was even more challenging regarding the aural description of non-textual, graphical information in the crawl. Unlike text-based emergency information, the software used to automatically generate radar maps and other moving graphics do not contain text files that can be converted into speech for purposes of creating an audible crawl. It was therefore impossible for developers to create a solution before the original deadline of May 26, 2015.¹⁶ Retaining this deadline would have forced broadcasters to remove all such graphics from their non-newscast programming to avoid enforcement action.

The Commission agreed, and waived the requirement to aurally describe such graphical information for a period of 18 months.¹⁷ The Commission added that this matter was ripe for discussion within the Disability Advisory Committee (DAC), which could provide consensus guidance on the capability of potential solutions to meet the needs of persons who are blind or visually impaired.¹⁸ The Commission also noted that visual but non-textual emergency information is typically duplicative of information that is provided in an accompanying crawl that is aurally described on the SAP. For example, the important details about an emergency and how to respond that may be conveyed by a map are already

¹⁴ *Id.* at 6 *citing* NAB Comments, MB Docket No. 12-207, at 10 (Dec. 18, 2012).

¹⁵ Waiver Order, 30 FCC Rcd at 5012-22.

¹⁶ NAB Petition at 10.

¹⁷ Waiver Order, 30 FCC Rcd at 5022.

¹⁸ *Id.*

contained in a crawl in virtually all cases, rendering much of the visual emergency information superfluous.¹⁹ Television stations only provide radar maps to improve clarity, not to convey separate information.²⁰ The Commission thus concluded that a waiver of the obligation to aurally describe non-textual information would not harm viewers while industry worked on a viable solution.²¹

III. **Extension of the Waiver of the Requirement to Aurally Describe Visual But Non-Textual Emergency Information is Justified**

Unfortunately, a viable solution remains unavailable, making it impossible for broadcasters to comply with the obligation to automatically aurally describe non-textual information before the existing waiver expires on November 26, 2016. NAB has contacted the known potential developers of such a solution, who have confirmed that no such technology currently exists or is expected to be produced in the foreseeable future. NAB's understanding is that the vendors remain stymied by the challenge of automatically creating descriptions for radar maps and other moving graphics that are generated by software that does not contain text files that can be converted into speech. The vendors have concluded that, as of today, it is simply not possible to automatically generate the required crawls.

NAB has also surveyed a number of its television station members who confirm that no such technology or solution is available, despite industry outreach and requests. Petitioners have also confirmed that the DAC has not yet taken up this issue. Petitioners agree that, to their knowledge, no viable solution for this problem is currently available, making it impossible for broadcasters to comply by the current deadline, and agree that an extension of the existing rule waiver for a period of 18 months is a reasonable approach.

¹⁹ *Id.*

²⁰ NAB Petition at 10.

²¹ Waiver Order, 30 FCC Rcd at 5022.

During this time, broadcasters and accessibility advocates will continue to coordinate with the vendor community on a technical solution. We also intend to explore other potential sources for a solution, including systems possibly under development for Internet graphics, the educational space, and crowd-sourced technologies, and we look forward to consideration of this matter within the DAC.

Grant of this request is justified and consistent with Commission precedent. First, as the Commission previously concluded, most of the critical information imparted by a radar map or visual graphic and how to respond to an emergency, are already contained in the text of accompanying crawls.²² Television stations broadcast maps and graphics to visually enhance the verbal message being delivered, rather than to convey a separate standalone message. The important emergency information is already being presented verbally in text crawls run on the SAP channel.²³ Thus, further delaying the obligation to aurally describe non-textual information will not cause consumers undue harm while a viable solution is developed.

Second, we are concerned that retaining the current deadline for compliance with the audible crawl rule will force local news teams to remove maps and other graphics from their news alerts – the only other alternative would be to try to create complex workarounds to manually describe graphics during a breaking news moment.²⁴ Broadcasters do not want to deprive viewers of this information, but without a reasonable measure of certainty that they will not be fined for failure to comply, they are loathe to risk Commission enforcement.²⁵

²² 30 FCC Rcd at 5022.

²³ Joint Comments of the Named State Broadcasters Association, MB Docket Nos. 12-107 and 11-43, at 4-5 (Apr. 13, 2015).

²⁴ Joint Comments of Meredith Corp., Nexstar Broadcasting Group, and Raycom Media, Inc., MB Docket Nos. 12-107 and 11-43, at 1 (Apr. 10, 2015).

²⁵ Comments of Entravision Communications Corp., MB Docket Nos. 12-107 and 11-43, at 2 (Apr. 13, 2015).

Extending the waiver will allow television stations to continue to provide such maps and graphics, and to exercise their best efforts to describe such information, while a reliable solution is developed.

Finally, as described earlier, extending the audible crawl rule waiver would serve the public interest.²⁶ The Commission may waive its rules for good cause,²⁷ which can be demonstrated by special circumstances that justify a deviation from a particular rule,²⁸ such as where compliance would be unduly burdensome or a waiver applicant has no reasonable alternative.²⁹ Extending the waiver of this obligation is necessary because vendors have not yet created a viable solution for automatically converting maps and other moving graphics into text, and in turn, audible crawls. Broadcasters have no control over the development of such a solution and no way to ensure compliance by the current deadline.³⁰ The Commission based this deadline on the information on hand when NAB filed its Petition in March 2015; however, the marketplace has not responded as anticipated. Petitioners will explore parallel technologies from other industries that could potentially work for broadcasters, although success remains uncertain.

Accordingly, Petitioners request an extension of the existing waiver of Section 79.2(a)(2)(iii) for a period of 18 months to allow industry more time to develop a viable solution for compliance, and for the DAC to consider this issue.

²⁶ NAB Petition at 14-16.

²⁷ 47 C.F.R. § 1.3.

²⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁹ *WAT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

³⁰ In a similar case, the Commission granted a 15-month waiver of its requirement that video programming distributors (VPDs) provide IP closed captioning user controls “due to technical difficulties,” and because VPDs lacked control over the development and distribution of the capabilities required for compliance. NAB Petition at 16 citing *DiMA Petitions for Temporary Partial Exemption of Limited Waiver*, Memorandum Opinion and Order, 27 FCC Rcd 9630 (M.B. 2012); 47 C.F.R § 79.103(c).

IV. Conclusion

For the foregoing reasons, Petitioners respectfully request an 18-month extension of the waiver of the rules requiring broadcasters to aurally describe visual but non-textual emergency information that the Commission granted on May 26, 2015.

Respectfully submitted,

Anthony Stephens
Eric Bridges
American Council of the Blind
1701 N. Eauregard Street, Suite 420
Alexandria, VA 22311
Phone: (202) 467-5081

Mark Richert, Esq.
American Foundation for the Blind
1660 L Street, N.W., Suite 513
Washington, DC 20036
(202) 469-6833

Rick Kaplan
Larry Walke
National Association of Broadcasters
1771 N Street N.W.
Washington, D.C. 20036
(202) 429-5430

September 2, 2016