

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

In the Matter of)	
)	
)	MB Docket No. 12-107
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)	MB Docket No. 11-43
Accessibility Act of 2010)	

PETITION FOR WAIVER



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EXECUTIVE SUMMARY

The American Cable Association (“ACA”) submits this Petition for Waiver (“Petition”) on behalf of ACA members with cable systems that continue to provide analog service and lack the necessary equipment to pass-through secondary audio programming (“SAP”) streams of broadcast stations that these systems offer in that format. These cable systems are unable to comply with the Commission’s rules requiring all cable systems to pass-through emergency information through a SAP stream by May 26, 2015, as set forth in the Commission’s April 2013 Emergency Information/Video Description Order (“EI/VD Order”).

ACA recognizes the importance of making emergency information that appears in on-screen crawls accessible audibly to blind and visually impaired individuals through video description, a goal that was achieved in the EI/VD Order. The vast majority of ACA member systems will fully comply with the emergency information rules when the rules go into effect on May 26, 2015.

Nonetheless, some ACA members maintain either hybrid digital/analog (“hybrid”) or analog-only systems that do not have the equipment to pass-through SAP to their subscribers on their analog service. Application of the new emergency information requirements to systems incapable of full compliance by May 26, 2015 due to lack of equipment will harm these operators and their subscribers when alternative means of compliance or additional time to come into compliance could be used to achieve full industry participation at a later date. Accordingly, ACA requests that the Media Bureau grant waivers for the following classes of systems:

- (i) Hybrid systems that lack the equipment to pass-through SAP streams on their analog service. For these systems, ACA requests that the Bureau permit them to substantially meet the pass-through requirement through the provision of free set-top boxes (“STBs”) for up to three analog television sets per household of each eligible customer, until such time that the hybrid system obtains the equipment to provide SAP on their analog service, or ceases providing broadcast stations in analog.
- (ii) Analog-only systems that lack the equipment to pass-through SAP. For these systems, ACA requests that the Bureau waive the compliance deadline until at least June 12, 2018, with the opportunity for Media Bureau to provide further waivers, if still needed, at that time.

These targeted measures will allow the Commission to meet its statutory obligation of making emergency information provided by broadcasters in an on-screen crawl aurally accessible to the blind and visually impaired community in a way that both furthers the public interest and avoids causing either undue financial burdens to smaller operators or the suspension of analog cable service to smaller and harder to serve communities.

Given the proximity of the upcoming May 26, 2015 compliance deadline, the Media Bureau should expedite its consideration of this Petition. Should the Bureau require additional time beyond May 26, 2015 to consider the merits of the request, ACA requests that Bureau also grant a temporary waiver of at least three months for hybrid and analog-only cable operators lacking the equipment necessary to pass-through SAP on their analog service, pending decision on the suggested alternative compliance proposals.

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PETITION FOR WAIVER



I. INTRODUCTION AND BACKGROUND

Pursuant to 47 C.F.R. § 1.3, the American Cable Association (“ACA”) petitions the Media Bureau to waive the Commission’s rules requiring all cable systems to pass-through emergency information through a secondary audio programming (“SAP”) stream for one small class of systems and waive the compliance deadline of May 26, 2015 for another small class of systems, as set forth in the April 2013 Emergency Information/Video Description Order (“EI/VD Order”).¹ In recognition of the technical and financial restraints of some smaller cable systems,

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; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (“EI/VD Order”) (describing in Appendix B the Final Rules as to be amended in Part 79 of Title 47 of the Code of Federal Regulations); see also 47 C.F.R. § 79.2.

ACA requests that a waiver be granted for hybrid analog/digital (“hybrid”) systems that fully comply with the Commission’s rules with respect to broadcast stations offered on their digital service, but lack the equipment necessary to pass-through SAP streams of broadcast stations simulcast on their analog service. To qualify for the waiver, these hybrid systems would, in lieu of satisfying the Commission’s pass-through requirement on their analog service, provide free set-top boxes (“STBs”) for up to three analog television sets per household of each eligible customer, until such time that the hybrid system obtains the equipment necessary to provide SAP on their analog service, or ceases providing broadcast stations in analog. ACA also requests that the Media Bureau waive the compliance deadline for analog-only systems that lack the equipment to pass-through SAP. For these systems, ACA recommends a waiver until at least June 12, 2018, with the possibility of receiving a further waiver from the Bureau.

The vast majority of systems operated by ACA’s more than 800 members will fully comply on May 26, 2015 with the emergency information rules adopted by the Commission in the EI/VD Order. These rules further the important goal of making emergency information that appears in on-screen crawls accessible audibly to blind and visually impaired individuals through video description. They “requir[e] the use of a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts . . . in an on-screen crawl.”² The rules also require that “certain apparatus . . . currently used to provide video description” also “be used to provide aural emergency information.”³ In essence, this means that all video programming providers and distributors – including cable operators, regardless of whether they use digital or analog technology – must obtain the equipment necessary “to make encoded video description and

² EI/VD Order, ¶ 1 (citing Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, § 202 (2010) (“CVAA”)), *see also id.*, ¶ 11.

³ *Id.*, ¶ 1 (citing CVAA, § 203); *see also id.*, ¶¶ 50, 60.

emergency information audible” on a secondary stream.⁴

While it is not burdensome for most cable operators to pass-through the SAP along with the primary video and accompanying audio of the broadcast stations that they offer in digital only or in both a digital and analog format, there are some cable operators that maintain either hybrid or analog-only systems do not have the equipment necessary to pass-through SAP of such stations that they deliver in an analog format. Application of these requirements to these cable systems incapable of full compliance by May 26, 2015 due to lack of equipment and financial resources to pass-through the broadcasters’ SAP in an analog format will be unnecessarily harmful to this small class of operators and their subscribers when alternative means of compliance could be used by one group of systems and additional time to come into compliance by another to achieve full industry participation at a later date. ACA raised these concerns and proposed compliance alternatives in the record prior to adoption of the EI/VD Order.

Although the Commission declined to adopt a technical capability exception,⁵ or alternative methods for making emergency information accessible to consumers who are blind or visually impaired,⁶ it recognized that certain small cable systems would face unique difficulties in complying with these new rules.⁷ Specifically, the Commission acknowledged ACA’s request for a waiver for analog-only systems that lack the equipment to pass-through SAP; and “invit[ed] the filing of class waivers on behalf of” hybrid systems that lacked the equipment necessary to pass through secondary audio streams on their analog service.⁸ The Commission explained that it was “sympathetic to the issues raised by ACA,” but did not believe

⁴ *Id.*, ¶ 55; see also *id.*, ¶¶ 4, 49.

⁵ *Id.*, ¶ 17.

⁶ *Id.*, ¶ 21.

⁷ *Id.*, ¶ 20.

⁸ *Id.*

it could address ACA's "proposals in the context of the instant proceeding."⁹ The Commission also noted that there were several matters that would require further consideration. With respect to the waiver sought for hybrid systems, these included how subscribers could certify their eligibility to receive up to three free STBs, the type of STB that eligible subscribers would receive, and whether there should be an upper subscriber limit on these systems that are permitted to comply through this alternate means.¹⁰ Regarding the compliance deadline waiver sought for analog-only systems, the Commission asked what notification requirements should be imposed to ensure that subscribers are aware of an operator's inability to provide the secondary audio stream.¹¹ In the absence of a fully-developed record on these matters, the Commission declined to adopt ACA's requests, "finding that they would be better handled through the existing waiver process in which ACA [would have] an opportunity to further develop its proposal and other interested parties [would] have a sufficient opportunity to comment," and delegated authority to the Media Bureau to act on any subsequent request filed by ACA.¹²

As ACA has noted in the record, only a limited number of hybrid systems lack the equipment necessary to decode emergency information and video description or pass-through broadcast SAP on their analog service. These systems rely on legacy equipment that cannot pass-through a SAP stream on their analog service without incurring relatively significant costs per affected headend. Instead of forcing these smaller systems to invest their limited funds in analog service equipment that will become obsolete once they transition to all digital distribution,

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* Specifically, Commissioner Pai noted that he "hope[s] that the Media Bureau will look favorably upon such waiver requests; otherwise, there is a real risk that many small cable systems will shut down rather than bear the cost of complying with our rules." Statement of Commissioner Ajit Pai, EI/VD Order. Commissioner Pai further commented that "[s]uch an outcome would be especially unfortunate for those living in rural America, *including* those who are blind or visually impaired." *Id.*

the Media Bureau should authorize alternative means of compliance that can achieve the same goal of accessibility to emergency information for the blind or visually impaired.¹³ This measured approach to achieving full compliance will avoid material harm to a relatively small group of hybrid systems. With respect to analog-only systems lacking the equipment necessary to pass through the broadcasters' SAP, ACA noted there are very few of these systems still in operation, each serves only hundreds of subscribers, and they are all financially constrained with owners who are struggling to justify keeping these systems running. If now forced to purchase new equipment to comply with EI/VD Order, many of these operators would likely shut down rather than incurring the cost, which will not provide the intended benefit to blind and visually impaired consumers in these systems' service areas. For this reason, ACA believes it is in the public interest right now to waive the deadline for when analog-only systems must comply with the emergency information rules. ACA believes it is reasonable to afford both hybrid and analog-only small cable systems additional time needed to overcome their technical and financial barriers for coming into full compliance. This will not have a material impact on the Commission's goal of achieving greater access to emergency information over the vast majority of distribution systems for the blind and visually impaired.

ACA is grateful for the Commission's attention to these critical considerations. Below, ACA addresses the questions posed by the Commission, and renews its requests for a waiver for certain hybrid systems that would permit alternative compliance and a waiver of the compliance deadline until June 12, 2018 for certain analog-only systems with the option to seek an additional waiver from Bureau. These limited requests maintain the spirit of the EI/VD Order, promote the public interest, and will safeguard small operators from financial harm. ACA

¹³ ACA recognizes that any alternate compliance program will require cable operators to incur additional costs. However, for smaller systems that less likely to receive many requests to participate in the program, the compliance program ACA suggests is likely to impose a lesser economic burden as that of purchasing new headend equipment necessary to pass through SAP on an analog service. It will also not force cable operators to invest in equipment likely to become obsolete in the future.

respectfully requests that this Petition be afforded expedited treatment to ensure that the classes of systems covered by this Petition are afforded the relief they require in a timely manner, and that in any event, the Commission waive the May 26, 2015 compliance deadline for these classes of systems for three months pending resolution of this Petition.

II. THE MEDIA BUREAU SHOULD PROVIDE RELIEF FOR HYBRID AND ANALOG-ONLY SYSTEMS THAT ARE UNABLE TO COMPLY WITH THE NEW EMERGENCY INFORMATION/VIDEO DESCRIPTION REQUIREMENTS

The cable industry is still in the midst of a self-funded technological overhaul, transitioning from delivering programming in analog to delivering programming in digital.¹⁴ For many small systems, this transition may not be fully complete for another decade. In the meantime, cable systems primarily fall under three categories. Some cable systems have transitioned to all digital. Others are in the middle of the transition, and operate hybrid systems where all or some channels are offered in digital, with some channels simulcast or only provided in analog. Finally, some systems remain analog-only.¹⁵ For the most part, analog-only systems serve an average of 206 subscribers per systems and are located in smaller towns and remote areas.¹⁶

As noted above, some cable operators that maintain hybrid or analog-only systems do not have the equipment necessary to pass-through SAP. Especially for those systems with fewer subscribers over which to spread fixed costs, purchasing the extra equipment necessary to pass-through the SAP on their analog service would be burdensome. This is primarily the

¹⁴ See, e.g., Emily Miels Leader, *Charter Now Requiring Cable Boxes For All TVs*, LEADER TELEGRAM (June 23, 2014), available at http://www.leadertelegram.com/news/front_page/article_89118e62-fb57-11e3-a3a8-001a4bcf887a.html.

¹⁵ See Federal Communications Commission, *DTV Transition Did Not Require Cable Systems to Switch to Digital*, FCC.gov (Feb. 24, 2014), available at <http://transition.fcc.gov/cgb/consumerfacts/dtvcable.pdf>.

¹⁶ See Letter from Barbara S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107, at 9 (filed Mar. 7, 2013) (“Mar. 7, 2013 ACA Ex Parte”) (“The average all-analog system serves only 206 subscribers, while the majority of all-analog systems serve even fewer subscribers.”). Though this data was compiled approximately two years ago, ACA believes a survey conducted today would yield similar results because digital or hybrid systems do not transition back to analog-only and subscriber numbers do not generally increase in these smaller systems.

result of challenging financial conditions that limit resources available to reinvest in these smaller cable systems – the same challenges that have prevented these systems from moving to all digital years ago.

The costs of compliance with the EI/VD rules for these operators relate primarily to the extra equipment necessary to pass-through the SAP on analog streams. To provide SAP for subscribers receiving analog service, a cable system needs equipment that performs two steps. First, the operator needs equipment capable of receiving a digital broadcast signal and down-converting it to analog with the SAP intact. Second, the operator needs equipment to retransmit that analog signal through their cable plant to customers with the SAP intact. If the requisite equipment is not already present in the headend, performing both steps requires upgrades on a per-channel basis.

For some cable systems, both hybrid and analog-only, the first step is a problem because the system receives broadcast signals that may contain SAP, but lacks the necessary equipment in the headend to down-convert the signal to analog and keep SAP intact.¹⁷ A system that receives digital broadcast signals would need an ATSC to NTSC receiver/decoder capable of processing the digital signal and passing it through in analog with SAP.¹⁸ Information available to ACA indicates that some cable systems, both hybrid and analog-only, particularly those that are smaller, do not have such receivers/decoders.¹⁹

¹⁷ Another hurdle that some systems face is initially receiving a broadcaster's signal containing SAP. Some remote cable systems must rely on a satellite feed as the lowest cost means of receiving broadcast stations and these feeds do not always contain a SAP stream. Therefore, a cable system, even with all the necessary equipment to pass through a broadcaster's SAP on their analog service, would be unable to do so if the SAP was stripped from the broadcast signal provided by its satellite distributor.

¹⁸ See Drake Digital, *Drake DAD860: Digital to Audio Decoder – Description and Applications*, at 8-10, available at <http://www.rldrake.com/pdf/DAD860-Application-Note.pdf> (“Drake Presentation”) (illustrating the configurations and equipment required for MVPDs to pass through mono analog audio, stereo analog audio, and stereo analog audio with SAP). One potential configuration requires using two decoders to accomplish converting all of these streams for analog distribution – one decoder for primary video and audio, and a separate decoder for SAP. See *id.* at 10.

¹⁹ For instance, in a configuration as illustrated by the Drake Presentation, ACA has learned that some operators only installed one ATSC-to-NTSC decoder at the time of the digital broadcast transition for the

The second step in passing through SAP similarly presents a problem for some cable systems, both hybrid and analog-only, because they do not have a BTSC stereo modulator with SAP capability. Many cable systems continue to rely on legacy NTSC monaural modulators that can only offer a single audio stream from the broadcaster.²⁰ These NTSC modulators take the audio accompanying the primary video received from the broadcaster over left and right audio channels and combine it into a single monaural audio stream for retransmission to the subscriber. An NTSC modulator can be durable and therefore operators have not found it economical to upgrade their systems by replacing it.²¹

In 2013, ACA conducted a survey to determine the extent to which its members lacked the equipment necessary to pass-through the SAP of broadcast stations. Of the 184 companies surveyed, 103 responded that they operate at least one cable system that still delivers broadcast signals using monaural audio equipment in some 500 systems.²² Of those 500 systems, 326 were analog-only systems. The remaining systems were hybrid systems that would be expected to deliver broadcast SAP over their digital service, but could not deliver the

primary video and audio, and omitted purchasing the second decoder for SAP capability. A likely reason for this choice was that these system's modulators, discussed *infra*, would not support multiple audio streams.

²⁰ There may also be some MVPDs that have BTSC stereo modulators, but without SAP capability. These systems would be able to pass through left and right-channel audio, but not secondary audio. These systems would also need additional equipment to pass through SAP. See *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Comments of National Cable Television Association, at 16 (filed Feb. 23, 2000).

²¹ Prior to the digital television transition, cable operators used NTSC modulators to process broadcast signals when received in analog format. When broadcasters switched to digital transmissions, many cable operators were able to continue using these durable NTSC modulators with a digital-to-analog receiver/decoder. Continued utilization of equipment that had not passed its useful life permitted some cable systems to reduce the costs they incurred as a result of the digital television transition. Some hybrid analog-digital systems may have also just chosen to not expend the resources on upgrading the analog part of their plant, which may soon be phased out in favor of all digital operations.

²² ACA did not specifically inquire whether its members lacked an ATSC to NTSC receiver/decoder capable of processing the digital signal and passing it through in analog with SAP, but some respondents noted this as a problem when asked whether there were any other reasons that their system could not deliver the broadcaster's SAP to their customers.

SAP over their analog service. Although the number of hybrid and analog-only systems that are unable to deliver the SAP has likely decreased since 2013, and is expected to continue to decrease over time, remaining hybrid and analog-only systems need additional time to transition to all digital systems or accumulate funds to purchase the necessary equipment, thus allowing for the delivery of video described emergency information via SAP.²³

The cost of obtaining the equipment necessary to pass-through SAP on an analog service can be prohibitive for operators of smaller systems. Systems adding and/or replacing an ATSC to NTSC receiver/decoder and replacing NTSC modulators with BTSC modulators that have SAP capability would incur more than minimal cost. When ACA last checked, one vendor popular among small cable operators quoted that the low-cost option for new equipment capable of passing through SAP on analog service would cost around \$1,700 per channel plus labor.²⁴ The total cost for a cable system replacing the legacy equipment would depend on the number of devices needed, which would depend on the number of channels that need to be offered with SAP. Assuming that an operator of a cable system carrying four broadcast signals needs to upgrade its equipment in order to provide SAP over their analog service, the total cost would be over \$6,800.

For some hybrid systems, having to purchase equipment necessary to pass-through the

²³ ACA recently filed a Petition for Rulemaking requesting that the Commission extend its small cable high definition ("HD") must-carry exemption. See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, American Cable Association Petition for Rulemaking (filed Jan. 27, 2015). For this Petition, ACA conducted a survey of its members and found that 143 member systems continued to rely on the HD must-carry exemption (a decrease from 385 systems in 2012). See *id.* at 4. Based on the results of this service, ACA believes the number of systems that would require a waiver of the emergency information rules is less than the number that reported an inability to pass through the broadcasters' SAP on their analog service when the FCC adopted its EI/VD Order two years ago.

²⁴ This figure is consistent, potentially taking into account decreases in electronics hardware costs, with the Commission's acknowledgment in its first Video Description Order that costs for cable systems to upgrade headend equipment to enable passing through of SAP are estimated to be around \$3,000 per channel. See *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, ¶ 27 (2000).

broadcasters' SAP in analog would significantly delay their transition to all digital platforms,²⁵ and, consequently, would not be the most cost-effective way to ensure that blind or visually impaired customers receive emergency information. As for the smallest analog-only systems, the cost of purchasing equipment necessary to offer the broadcasters' SAP on their analog service is an expense they simply cannot afford. Requiring these small systems to purchase new equipment may result in them shutting down completely, a result detrimental to all subscribers, whether blind or visually impaired or not. Accordingly, ACA asks the Media Bureau to (i) permit covered hybrid systems to use a more cost-effective means of compliance, and (ii) waive the compliance deadline for covered analog-only systems until June 12, 2018, with the option to file with the Media Bureau for more time thereafter.²⁶

A. Hybrid Systems that Lack the Equipment to Pass-Through Broadcast SAP on their Analog Service Should be Given Alternative Options for Compliance with the Requirements for Eligible Customers.

The vast majority of cable subscribers receive broadcast signals in a digital format from all digital or hybrid systems that pass-through broadcast SAP, including access to emergency information. Many of the hybrid systems also simulcast the broadcast signals in an analog format and their customers receive the broadcast SAP, which includes access to emergency information, over this transmission as well. Because there are a limited number of these hybrid systems that lack the equipment necessary to decode emergency information and video description or pass-through broadcast SAP on their analog feed, the Media Bureau should

²⁵ In 2013, many of ACA's members noted that they were "in the process of offering [their] customers an all-digital lineup in the next 3-5 years" or that "most systems will be all-digital within 5 to 10 years" and therefore indicated that they "do not plan to invest in more analog equipment." See ACA Mar. 7, 2013 Ex Parte at 7.

²⁶ ACA filed a series of Ex Parte letters on this matter in March and April of 2013. See Mar. 7, 2013 ACA Ex Parte; Letter from Barbara S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107 (filed Mar. 22, 2013); Letter from Barbara S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107 (filed Apr. 2, 2013). In the last Ex Parte letter, on April 2, 2013, ACA refined its proposals, limiting its request to two categorical concessions for analog-only and hybrid systems.

authorize an alternative means of compliance for these systems that can achieve the same goal of accessibility to video described emergency information for the blind and visually impaired that does not require investment in analog service equipment that will become obsolete once the affected operators transition to all-digital service.

To this end, ACA seeks a class waiver on behalf of its cable system members who offer all broadcast stations in a digital format, but are unable to pass-through broadcast SAP for one or more of these stations that are simulcast in an analog format.²⁷ Specifically, ACA requests that the Media Bureau permit operators of these systems the opportunity to comply with the new rule by offering their blind or visually impaired subscribers, at no additional cost, the equipment capable of accessing their digital service that passes through SAP. The Media Bureau could accomplish this most effectively by permitting cable operators of these systems to provide to eligible customers STBs that enable the receipt of the SAP of all broadcast stations carried in a digital format.²⁸ This emergency information alternate compliance STB program (“STB Program”) could require these qualifying hybrid systems to provide STBs at no charge to eligible customers for up to three analog televisions sets per home at the time of the request.

As the Commission pointed out in the EI/VD Order, alternative compliance options raise some logistical questions that require further discussion. Below, ACA addresses the issues raised by the Commission.

In response to ACA’s proposed STB Program, the Commission asked how subscribers could certify that they need free STBs.²⁹ ACA endorses the process established in the

²⁷ ACA’s 2013 survey found that 174 hybrid systems lacked the equipment to pass-through the SAP.

²⁸ The required STB would provide the eligible customer with access to the same channels that the subscriber received on their analog television set without using a STB. A digital terminal adapter may qualify as a STB that meets this definition. There should be no obligation for the cable operator to provide a more advanced STB at no charge.

²⁹ EI/VD Order, ¶ 20 (“[T]o the extent that cable operators provide eligible customers with free STBs, how could subscribers certify that they need such an accommodation?”).

Commission's recent User Guide Order for determining a consumer's eligibility for an accessible navigation device or accessibility solution in the context of "talking guide" STBs.³⁰ The same "Verification of Eligibility" process, which was adopted by the Commission after receiving comment from consumer groups and multichannel video programming distributors ("MVPDs"), could be adopted here to establish eligibility for the proposed STB Program.³¹

Another issue is the type of STB that must be provided as alternate means of compliance. In light of the recently adopted CVAA requirements adopted in the User Guide Order, ACA proposes that until cable systems qualifying for the EI/VD waiver sought here are required to make talking navigation devices available to consumers under the User Guide Order, qualified hybrid operators should only be required to provide free *standard* STBs.³² However, once these MVPDs are required to comply with the new CVAA talking User Guide requirements, cable operators participating in the STB Program would be expected to provide STBs that are appropriately compliant with those regulations.

Finally, in the EI/VD Order, the Commission also asked whether there should "be an

³⁰ *Accessibility of User Interfaces, and Video Programming Guides and Menus and 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 132 (2013) ("User Guide Order").

³¹ The User Guide Order allows covered entities to verify that a consumer requesting an accessible navigation device or accessibility solution is eligible for such equipment when the covered entity chooses to rely on an accessibility solution that involves providing the consumer with sophisticated equipment and/or services at a price that is lower than that offered to the general public. With respect to proof of eligibility, the Commission mandated that covered entities must allow a consumer to provide a wide array of documentation to verify eligibility for the accessibility solution provided, and must protect any personal information gathered from consumers through their verification procedures. *See Id.*, ¶ 132.

³² The Media Bureau should take the same approach used in the User Guide Order. In other words, for the purpose of the STB Program, until smaller operators with 400,000 or fewer subscribers are required to come into compliance with the new CVAA talking guide STB requirement, qualified hybrid operators should only be required to provide free standard STBs. *See Id.*, ¶¶ 111, 114 (setting a general compliance deadline of three years from the date the User Guide Order is published in the Federal Register, and a later compliance deadline of five years for certain mid-sized and smaller MVPD operators and small MVPD, by which covered entities must comply with the requirements of Sections 204 and 205).; *see also* Appendix B at 104.

upper subscriber limit on the hybrid digital/analog systems that are permitted to comply through an alternate means.” ACA believes there is no need to set an upper limit. The waiver ACA is requesting will only be attractive to small hybrid systems that both lack the equipment necessary to pass-through SAP streams on their analog service and would find it less costly to provide three free STBs to eligible customers than to purchase the equipment necessary to pass through the SAP on their analog service. Given that providing three free STBs to eligible customers is not an insignificant cost, the Bureau should expect systems other than the smallest to conclude that it is more cost effective to purchase the necessary equipment than to utilize the waiver and to provide free STBs to eligible customers. Since the program is designed to make eligible customers whole regardless of whether the small cable system avails itself of the class waiver, and owners of these cable systems are inclined only to utilize the waiver if they are small enough to benefit, the Bureau need not proscribe an upper limit.³³

B. Analog-Only Systems Lacking the Equipment to Pass-Through a Secondary Audio Stream Should be Given Until At Least June 12, 2018 to Comply.

Analog-only cable systems face unique challenges, often because of their small size, rural nature, lack of resources and dated technology. In 2013, ACA surveyed its members,³⁴ to determine the difficulties they may face in coming into compliance with the proposed EI/VD

³³ Although ACA does not believe an upper limit is necessary, ACA would not object to the Media Bureau adopting an upper limit of 15,000 subscribers because ACA believes all hybrid cable systems of this size that are simulcasting broadcast signals in analog have the equipment necessary to pass-through the SAP on this analog service, and if they are not, they would find it more cost effective to purchase the equipment necessary to pass-through the SAP than to provide free STBs to eligible customers. See 47 C.F.R. Sec. 76.934(h)(11) (defining a small cable system as one with less than 15,000 subscribers).

³⁴ ACA represents approximately 840 independent MVPDs that serve about 7.4 million video subscribers, primarily in smaller markets and rural areas. ACA’s members range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. The median number of video subscribers per member is 1,060. 80% of ACA’s members serve fewer than 5,000 subscribers. Most ACA members provide video, voice, and data services, as part of a triple play offering, delivering these critical services to smaller-market and rural subscribers across the nation. See *Protecting and Promoting the Open Internet, Framework for Broadband Internet Service*, GN Docket No. 14-28, GN Docket No. 10-127, Comments of the American Cable Association, Exhibit B, Connecting Hometown America, How Small Operators of ACA are Having a Big Impact, A paper by the American Cable Association, Research and Analysis by Cartesian, at 3 (filed July 17, 2014).

regulations. Of the more than 800 small and medium-sized MVPDs, 987 operated analog-only systems, cumulatively serving 203,000 subscribers, with “[t]he average all-analog system serv[ing] only 206 subscribers.”³⁵ Of the 987 analog-only systems, 807 (or 82 percent) served 250 or fewer subscribers.

It is financially unfeasible for operators of analog-only systems to purchase new equipment to pass-through SAP content and invest in additional system upgrades. Due to their small size, analog-only systems have far fewer customers over which to spread the costs of system upgrades. Operators of these systems also often face higher programming costs than those incurred by larger operators on a per-subscriber basis, have higher fixed non-programming costs because they serve rural markets, and must cope with fierce competition from DBS providers in rural markets. Requiring them to purchase new equipment will provide no benefit to the blind and visually impaired community if, as a result, operators must shut down systems, thus eliminating access to cable services in some communities. The affected cable systems frequently provide a value-priced option for subscribers that only need very basic service and their customers would likely be severely disenfranchised if these systems were to be shut down. ACA urges the Media Bureau to take steps to avoid such an outcome.

Accordingly, in order to avoid causing unnecessary financial harm to the smallest of independent cable operators, ACA requests that the Media Bureau grant analog-only systems that lack the equipment to pass-through broadcast SAP additional time – until June 12, 2018 – to come into compliance. The hope is that in the coming years, more analog-only systems will be able to upgrade to hybrid or all digital systems, whether through upgrades made possible by declining equipment costs, interconnection, consolidation, technological innovation or by upgrading their equipment to provide the SAP in a more cost-efficient manner. For analog-only systems that do not have the means to upgrade their systems but nonetheless continue to serve

³⁵ Mar. 7, 2013 ACA Ex Parte at 9.

their communities beyond the deferral period, ACA suggests that the Media Bureau maintain its authority to consider granting an additional waiver beyond the June 12, 2018 deadline.

In the EI/VD Order, the Commission, supposing that analog-only systems would be granted an extension for complying with the new requirements, asked what notification requirements should be imposed on analog-only operators for the purpose of ensuring that their subscribers are aware of their inability to provide the emergency information aurally through the secondary audio stream.³⁶ In its 2013 filings, ACA had suggested that, between 30 and 60 days before the effective date of the emergency information pass-through requirement, analog-only systems inform subscribers that the system is unable to pass-through aural emergency information because the system does not offer a SAP stream with its analog service.³⁷ As discussed below, in recognition of the proximity of the effective date at this point, ACA requests a temporary three-month waiver of the compliance deadline, pending the decision on this Petition.³⁸

ACA proposes that the Commission require the following form notice for operators to provide to subscribers of analog-only systems unable to pass through SAP:

³⁶ EI/VD Order, ¶ 20.

³⁷ As the Bureau is unlikely to be able to reach a decision on the merits of ACA's request within these timeframes assuming a May 26th compliance deadline, ACA requests that the Bureau temporarily extend the May 26th compliance deadline for operators of analog-only systems for three months, pending decision on the Waiver request. The 30-60 day timeframes would then apply to the new compliance deadline. Such Commission-mandated subscriber notice requirements trigger no Paperwork Reduction Act requirements. See, e.g., *Adams Cable Equipment, Inc.; Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 28 FCC Rcd 11011, ¶ 7, n.39 (2013) (noting that a Commission-mandated subscriber notice requirement is not subject to Office of Management and Budget approval because it is not a collection of information).

³⁸ ACA believes the Bureau will have sufficient time to act on this waiver prior to the May 26th compliance deadline. However, should that not be the case, there could be a brief period of time when compliance for all cable systems is legally required, including those that would qualify for the waiver, even though they would be physically unable to comply with the pass-through requirement. An immediate grant of a three month waiver of the compliance deadline for the purpose of permitting the Bureau to complete its consideration of this Waiver Petition would avoid subjecting qualified systems to enforcement action during this period. ACA brings this matter to the Bureau's attention to avoid creating legal uncertainty and risk for qualified systems, while recognizing that the Bureau may find that it can be addressed through other means that achieve the same end.

On (DATE), cable operators, direct broadcast satellite providers, and Internet Protocol (IP) television providers are required to provide emergency information aurally on a secondary audio stream concurrent with emergency information that is provided visually (such as that provided via crawls) during programming that is not a newscast. The purpose of the obligation is to make this type of emergency information accessible to individuals who are blind or visually impaired. Due to its technical incapability (NAME OF CABLE OPERATOR) is not required to comply with this requirement until (DATE). Therefore, if you are blind or visually impaired, or there is an individual who is blind or visually impaired in your household, this emergency information will not be accessible. It may be available from another cable operator, direct broadcast satellite provider, or IP television provider in your area. The emergency information contained in a secondary audio stream is different from emergency alerts provided through the Emergency Alert System (EAS), which are provided by (NAME OF CABLE OPERATOR) to all subscribers of this system. To learn more about this matter, you may contact (NAME OF CABLE OPERATOR) and (PHONE NUMBER OF CABLE OPERATOR), or visit (FCC WEB PAGE ADDRESS).

This notice adequately conveys the limitations of analog-only systems unable to pass through a SAP stream, and sufficiently conveys alternative options for customers who may benefit from switching to a service that is capable of conveying televised emergency information aurally.

III. EXPEDITED TREATMENT OF THIS PETITION IS NECESSARY

Given the proximity of the upcoming May 26, 2015 compliance deadline, ACA requests that the Media Bureau expedite its consideration of this request for waiver to permit covered hybrid systems to comply with the EI/VD rule through alternative means and to waive the compliance deadline for analog-only systems until June 12, 2018 with the right to extend the waiver thereafter. ACA appreciates the need for emergency information provided via an on-screen crawl to be rendered aurally and passed-through on a SAP for the benefit of the blind and visually impaired, regardless of the type of cable system in operation. At the same time, a measured approach to achieving full compliance will avoid material harm to a relatively small group of hybrid and analog-only cable systems. ACA believes the Bureau can afford these small cable systems the additional time needed to overcome their technical and financial barriers for coming into compliance without materially impact to its goal of achieving greater

access to emergency information over the vast majority of distribution systems for the blind and visually impaired.

To this end, ACA requests that this petition be reviewed on an expedited basis, as the May 26, 2015 deadline for compliance with the EI/VD Order is fast approaching. Several of the issues identified in the EI/VD Order as requiring additional development in the record, such as verification of eligibility and the nature of an accessible STB, have been addressed in other contexts that can be applied here, thus reducing the number and range of open issues requiring significant further development. Should the Bureau require additional time beyond the deadline to carefully consider the aforementioned proposals, ACA asks the Media Bureau to temporarily waive the EI/VD compliance deadline, for at least three months, to the class of covered hybrid and analog-only cable operators unable to presently comply to avoid placing those at risk of enforcement action for violating the new requirements by default, pending consideration of this Petition itself.³⁹

IV. CONCLUSION

The EI/VD Order furthers an important goal of making emergency information that appears in on-screen crawls accessible audibly to blind and visually impaired individuals through video description. Nonetheless, application of these requirements to systems incapable of full compliance by May 26, 2015 due to lack of equipment and financial resources will be detrimental to this small class of operators and their subscribers when alternative means of compliance could be used by one group of operators and additional time to come into compliance by another to achieve full industry participation at a later date. ACA stresses that adopting the targeted measures it has proposed will allow the Commission to meet its statutory obligation of making emergency information provided by broadcasters in an on-screen crawl aurally accessible to the blind and visually-impaired community in a way that both furthers the

³⁹ See n. 38, supra.

public interest and avoids causing either undue financial burdens to smaller operators or the suspension of analog cable service to smaller and harder to serve communities.

Respectfully submitted,

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