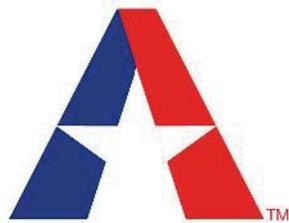


Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS



AMERICAN CABLE
ASSOCIATION

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
875 Greentree Road
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Mary C. Lovejoy
Vice President of Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 603-1735

Ross J. Lieberman
Senior Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

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COMMENTS OF THE AMERICAN CABLE ASSOCIATION

I. INTRODUCTION

The American Cable Association (“ACA”) hereby submits its comments in response to the Federal Communication Commission’s (“Commission”) Second Further Notice of Proposed Rulemaking (“Second FNPRM”). The Second FNPRM seeks comment on, among other things, whether to require multichannel video programming distributors (“MVPDs”) to provide their customers with navigation devices that contain a simple and easy to use mechanism (“simple activation mechanism”) for accessing visual emergency information shown during non-newscast television programming, such as an on-screen crawl, through an aural representation on the secondary audio stream.¹ ACA applauds the Commission’s commitment to making visual emergency information in video programming audibly accessible to individuals who are blind or visually impaired, and ACA members stand willing to work with the Commission to ensure that subscribers have access to the full video programming experience.

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*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 5186, ¶ 47 (2015) (“*Second Report and Order and FNPRM*”).

As a threshold matter, however, neither Section 202 of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) nor any other provision of law mandates that the Commission require MVPDs to provide customers with navigation devices that contain a simple and easy to use mechanism for activating the secondary audio stream for emergency information, and it is far from clear that the Commission has the authority to impose such a requirement.² Nonetheless, if the Commission decides to move forward with such a requirement, it must bear in mind that providing new features and services, including those that improve accessibility for consumers, can be technically complex and costly in terms of money and time for MVPDs, particularly for small and medium-sized MVPDs (“smaller MVPDs”) who operate older systems that cannot easily implement upgrades that may be designed for and deemed reasonable to larger MVPDs. There are several actions the Commission should take in this proceeding to account for the unique compliance challenges faced by smaller MVPDs.

First, the Commission should require MVPDs to provide such navigation devices to subscribers only upon request. *Second*, the deadline for smaller MVPDs (MVPD operators with 400,000 or fewer subscribers as of year-end 2012) and smaller systems (MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012) to comply with any new requirements should be simultaneous with the deadline for compliance with the Commission’s rules regarding audibly accessible video programming guides and menus.³ *Third*, the Commission should make clear

² See *Second Report and Order and FNPRM*, Statement of Commissioner Ajit Pai Approving in Part and Dissenting in Part (neither Section 204 nor Section 205 mention anything about devices including a mechanism for activating audible emergency information capability; “The Commission simply pulls such a mandate out of thin air”).

³ 47 C.F.R. § 79.108(b) (requiring compliance by no later than December 20, 2018 for certain smaller MVPDs).

in this proceeding that, at the very least, it has the authority to provide an exemption from the rule for cable systems serving 20,000 or fewer subscribers if it later becomes apparent that compliance with the accessibility requirements are too burdensome for such systems. *Fourth*, the Commission should direct the Media Bureau, in its upcoming planned review of the marketplace for accessible navigation devices to also examine the burden on smaller MVPDs created by the new activation mechanism requirement and make recommendations as to whether any exemptions or alternative compliance methods are appropriate.⁴ *Finally*, the Commission should clarify that any obligation to provide customers with navigation devices that contain a simple activation mechanism for accessing aural emergency information in a secondary audio stream applies only to MVPDs that sell or lease navigation devices to their subscribers.

II. THE COMMISSION'S PROPOSAL COULD IMPOSE SUBSTANTIAL BURDENS ON SMALL AND MEDIUM-SIZED MVPDS

While ACA members are committed to making their services fully accessible to all subscribers, the Commission must recognize that a requirement to provide all subscribers with navigation devices that contain a simple activation mechanism for accessing aural emergency information on a secondary audio stream would impose a significant burden on small and medium-sized MVPDs that as yet cannot be fully quantified. Implementing any accessibility solution requires considerable effort and is not simply a matter of distributing newly accessible navigation devices. At the very least, to ensure that accessible navigation devices are compatible with existing equipment and network infrastructure, MVPDs must undertake software

⁴ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 114 (2013) (“*User Interfaces Order*”) (“[W]e will review the marketplace after the three-year compliance deadline for larger MVPDs to determine whether this five-year delayed compliance deadline should be retained or extended (in whole or in part).”).

upgrades at every headend, and in many cases must upgrade hardware and firmware as well. As ACA has previously explained, software upgrades are exceedingly complex because they may also require corresponding upgrades to other components of the video distribution ecosystem, including the network infrastructure, headend equipment, guide firmware and software, video-on-demand platforms, and service agreements with vendors.⁵ These components vary not only from one cable operator to another, but also from system-to-system within a cable operator's footprint.⁶

Making necessary upgrades is more difficult for smaller MVPDs than large MVPDs. The Commission recognized the difficulties faced by smaller MVPDs in the User Interfaces Order, which requires MVPDs to offer navigation devices with audibly accessible video programming guides and menus ("talking guides").⁷ Specifically, the Commission noted that smaller MVPDs "generally lack the market power and resources to drive independently the development of MVPD headend or customer premises equipment" and "[t]hus, it is the large cable operators that generally dictate equipment features to manufacturers and commonly get priority in the delivery of that equipment."⁸ Further, as ACA has explained, there is no guarantee that accessibility solutions that are developed for the larger operators will be compatible with smaller

⁵ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket 12-107, Comments of the America Cable Association, at 7-8 (filed July 15, 2013) ("ACA Comments").

⁶ *Id.*

⁷ *User Interfaces Order*, ¶ 114.

⁸ *Id.*, ¶ 115.

or older systems.⁹ The Commission has also acknowledged that, “small systems have a smaller customer base across which to spread costs.”¹⁰

III. THE COMMISSION SHOULD TAKE STEPS TO MINIMIZE THE BURDEN ON SMALLER MVPDS AND OPERATORS OF SMALLER SYSTEMS

If the Commission does impose a requirement on MVPDs to provide navigation devices with a simple activation mechanism for accessing emergency information over the secondary audio stream, it should take steps to minimize the burden that such a requirement would place on small and medium-sized MVPDs. First, the Commission should require that MVPDs provide such navigation devices to subscribers only upon request, rather than to all customers.

Tailoring the requirement thusly ensures that those whom the rule is designed to serve will receive its benefits while also reducing the significant burden on small and medium-sized MVPDs and operators of smaller systems.

Second, the Commission can partially ease the burden associated with this new accessibility requirement by aligning the compliance deadline of the new rule for smaller MVPDs (MVPD operators with 400,000 or fewer subscribers as of year-end 2012) and smaller systems (MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012) with the existing December 20, 2018 deadline for these smaller MVPDs and smaller systems to offer navigation devices with talking guides. For these entities, it would be more cost effective to make the software and equipment upgrades necessary to comply with the proposed simple activation mechanism rule if they could do so at the same time that they make the upgrades necessitated by the User Interface Order. A common deadline for both device-related accessibility obligations would

⁹ *ACA Comments* at 8.

¹⁰ *User Interfaces Order*, ¶ 115

minimize the cost to smaller MVPDs and operators of smaller systems by allowing them to undertake all necessary upgrades simultaneously. It would also increase the likelihood that all necessary accessibility components will be contained in a single software solution.

In the User Interface Order, the Commission agreed with industry commenters that “the benefits of a simplified, uniform compliance deadline outweigh any inconvenience that might be caused to consumers.”¹¹ In fact, rather than causing inconvenience, it is more likely that aligning these separate requirements would “reduce consumer confusion about the accessibility of device features,” which the Commission has recognized as a benefit of having a common deadline.¹² Providing subscribers with navigation devices that contain a simple activation mechanism for accessing the secondary audio stream but that do not include other accessibility features that will be made available in the future could frustrate and inconvenience subscribers who may wish to lease or purchase navigation devices that offer audibly accessible programming guides and menus once those devices become available. A common deadline avoids this issue by ensuring that all accessibility features are made available at the same time.

Third, the Commission should make clear in the Order that it at least has the authority to later provide exemptions from the final rule for cable systems serving 20,000 or fewer subscribers if it becomes apparent that its requirements are too burdensome for such systems. To the extent that the Commission interprets Section 202 of the CVAA broadly enough to include the authority to impose a requirement that MVPDs must provide their customers with navigation devices that contain a simple activation mechanism for aural emergency information contained in the secondary audio stream, that grant of authority necessarily includes the

¹¹ *Id.*, ¶ 112.

¹² *Id.*

flexibility to exempt smaller systems from that requirement. As the Commission itself acknowledged in requiring manufacturers of apparatus subject to Section 79.105 of the Commission's rules to provide a simple activation mechanism for aural emergency information contained in the secondary audio stream, the CVAA "[does] not specify the 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."¹³ It is well within the scope of that discretion for the Commission to include within its implementing rules a provision permitting petitioners to request an exemption at the very least for cable systems with 20,000 subscribers or fewer from any requirement that may be too burdensome.

Fourth, because the extent of the burden that the proposed requirement would place on small and medium-sized MVPDs and operators of smaller systems cannot be fully determined at this time, the Commission should extend the Media Bureau's planned review of the marketplace for accessible navigation devices to include an examination of whether market conditions make it feasible for small and medium-sized MVPDs and operators of smaller systems to comply with the obligation to provide consumers a navigation device with a simple activation mechanism for accessing the secondary audio stream. The Commission should further direct the Media Bureau, in its report on marketplace conditions, to make recommendations as to whether any exemptions or alternative compliance methods may be appropriate to reduce the burden on small and medium-sized MVPDs and operators of smaller systems.

¹³ *Second Report and Order and FNPRM*, ¶ 29 (emphasis added).

The Commission has already committed to reviewing the marketplace for accessible navigation devices after the compliance deadline for larger MVPDs to implement the talking guides rule to determine whether the Dec. 20, 2018 deadline for small- and medium-sized providers should be extended.¹⁴ In deciding to undertake this review, the Commission felt that the full extent of the burdens imposed on smaller MVPDs by the accessible user interface obligation would be clearer once the market had developed to provide larger MVPDs with accessibility solutions that may or may not be adoptable by smaller MVPDs. Given the benefits of allowing smaller MVPDs to make all necessary software upgrades and equipment purchases simultaneously and of ensuring that market-based accessibility solutions are available to meet all accessibility requirements, it would be appropriate for the Commission to expand the scope of the Media Bureau's review to include the potential burdens of compliance with any new requirement for a simple activation mechanism for aural emergency information contained in the secondary audio stream.

The Commission originally called for this review to ensure that the benefits of the regulation do not outweigh the cost. If the burden of compliance with the requirement to offer audibly accessible navigation devices is sufficient to warrant an exemption for cable systems with 20,000 subscribers or fewer, it is very likely that the cost of providing accessible navigation devices with a simple and easy to use mechanisms for accessing a secondary audio stream will also warrant such relief. Once the Media Bureau has undertaken its review and gained a comprehensive understanding of the marketplace for accessible navigation devices, it should report to the Commission whether the burdens imposed by the accessibility rules warrant any

¹⁴ *Id.*, ¶ 114.

exemptions or alternative compliance methods for small and medium-sized MVPDs and make its recommendations to the full Commission.

Finally, the Commission should confirm that any obligation to provide customers with navigation devices with a simple activation mechanism for accessing emergency information in the secondary audio stream applies only to MVPDs that sell or lease navigation devices to their subscribers. Limiting the requirement to MVPDs that sell or lease navigation devices to subscribers is consistent with the Commission's approach in implementing the talking guides requirement, which mandates only that MVPDs "that lease or sell navigation devices ... ensure that the on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming are audibly accessible in real time upon request by individuals who are blind or visually impaired."¹⁵ This approach is also consistent with the Commission's rule that MVPDs that lease or sell navigation devices with built in closed-captioning capability ensure that closed captioning can be activated through a mechanism that is reasonably comparable to a button, key, or icon.¹⁶ In neither case does the Commission require MVPDs that do not otherwise offer navigation devices to customers provide navigation devices that meet the accessibility requirements.

¹⁵ 47 C.F.R. § 79.109(a)(1).

¹⁶ 47 C.F.R. § 79.109(b).

Respectfully submitted,

/s/ Mary C. Lovejoy

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Mary C. Lovejoy
Vice President of Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 603-1735

Ross J. Lieberman
Senior Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

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