



Mary C. Lovejoy
Vice President of Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007

mlovejoy@americancable.org
(202) 603-1735

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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Communication of the American Cable Association; *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

Dear Ms. Dortch:

On September 1, 2015, Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and the undersigned, along with Barbara Esbin, Counsel to ACA, met with Evan Baranoff, Mary Beth Murphy, Steve Broeckaert, Michelle Carey, Calisha Myers, and Jonathan Mark of the Media Bureau to discuss our recently filed comments in the above-referenced proceeding.¹

During the meeting we explained that to comply with the Commission’s rules for the accessibility of navigation devices, including the Commission’s proposal to require multichannel video programming distributors (“MVPDs”) to provide their customers with navigation devices that contain a simple and easy to use mechanism for accessing visual emergency information shown during non-newscast television programming, most cable operators expect they will need to upgrade their cable systems. These MVPDs believe software upgrades will be necessary at each system, and in some cases hardware and firmware upgrades as well. These upgrades are often more technically challenging and costly for smaller cable operators and operators of smaller cable systems because these operators “lack the market power and resources to drive independently the development of MVPD headend or customer premises equipment,”² and “have a smaller customer base across which to spread costs.”³

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 Further Notice of Proposed Rulemaking, 30 FCC Rcd 5186 (2015).

² *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order, 28 FCC Rcd 17330, ¶ 115 (2013) (“*User Interfaces Order*”).

³ *Id.*

We explained that complying with the emergency information obligation will be burdensome for smaller cable operators and operators of smaller cable systems, but until the market for accessible navigation devices has more fully developed, it is impossible to determine the precise burden that compliance with the Commission's proposal would impose on these MVPDs. We then offered several suggestions for ensuring that, if adopted, the final rule does not ultimately prove substantially more burdensome – technically or economically – than smaller MVPDs can be reasonably be expected to bear.

First, we suggested that the Commission, if it imposes the new accessibility obligation under consideration, should align the compliance deadline for smaller operators and operators of smaller systems with the common deadline of two existing obligations related to the accessibility of navigation devices. Pursuant to the Commission's rules, as of December 20, 2018, smaller MVPDs that lease or sell navigation devices with built in closed-captioning capability must ensure that closed captioning can be activated through a mechanism that is reasonably comparable to a button, key, or icon.⁴ Second, these MVPDs must also ensure by the same deadline that the on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming are audibly accessible ("talking guides") in real time upon request by individuals who are blind or visually impaired.⁵ ACA proposed that if the Commission adopts the proposed requirement to provide customers with navigation devices that contain a simple and easy to use mechanism for accessible visual emergency information, the deadline for this obligation for smaller MVPDs, as defined in the *User Interface Order*, should also be set for December 20, 2018. By aligning the deadlines of all three accessibility requirements, the Commission can help minimize the cost to smaller MVPDs and operators of smaller systems by allowing them to make available the required accessibility features by upgrading each of their system's software, firmware, and equipment one time. A single reasonable deadline will also help consumers by providing certainty that the navigation device they acquire after such deadline includes all the accessibility features that Congress and/or the Commission intends to be available. Consumers in need of these devices will therefore be spared any possible inconvenience of obtaining new navigation devices as each new accessibility feature is made available and having to acclimate serially to such new devices. Under ACA's proposal, all required accessibility features would be made available by smaller MVPDs at the same time on the same device.

Second, if the Commission does adopt the proposed requirement to provide customers with navigation devices containing a simple and easy to use mechanism for activating the secondary audio stream for emergency information, it should make clear in the order 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, and such an exemption is necessary.

Third, we recommended that the Commission expand the Media Bureau's planned review of the marketplace for accessible navigation devices to determine whether to retain or extend the 2018 deadline for small and medium-sized MVPDs and operators of smaller systems to include an examination of whether market conditions make it feasible for these providers to comply with the proposed simple activation mechanism obligation.⁶ The Commission should further direct the Media Bureau, in its report,

⁴ The tentative compliance deadline of Dec. 20, 2018, applies to smaller MVPDs (those serving 400,000 or fewer subscribers) 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). See *User Interfaces Order*, ¶ 114.

⁵ *Id.*

⁶ *User Interfaces Order*, ¶ 114 ("[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). Once we reach the three-year compliance deadline for larger operators, we believe we will be

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.

Fourth, the Commission should limit the requirement to provide navigation devices with a simple activation mechanism for accessing emergency information over the secondary audio stream to blind and visually impaired subscribers only upon request, rather than to all customers. Tailoring the requirement thusly would ensure that those whom the rule is designed to serve will receive its benefits while also reducing the burden on small and medium-sized MVPDs and operators of smaller systems that could be incurred by requiring these devices to be deployed to all customers.

Finally, the Commission should confirm that the secondary audio stream activation mechanism obligation applies only to MVPDs that sell or lease navigation devices to their subscribers. This approach, which will eliminate compliance burdens for a very small subset of smaller systems, is consistent with the Commission's approach in implementing the talking guides requirement⁷ and the requirement that MVPDs that lease or sell navigation devices with built in close-captioning capability ensure that closed captioning can be activated through a mechanism that is reasonably comparable to a button, key, or icon.⁸

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Mary C. Lovejoy

cc: Evan Baranoff
Mary Beth Murphy
Steve Broeckaert
Michelle Carey
Calisha Myers
Jonathan Mark

better positioned to assess whether mid-sized and/or smaller operators will be able to comply within another two years. We delegate authority to the Media Bureau to initiate this review.”).

⁷ 47 C.F.R. § 79.108(a)(1).

⁸ 47 C.F.R. § 79.109(b).