

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

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

COMMENTS OF DIRECTV, LLC

DIRECTV, LLC (“DIRECTV”) hereby submits brief comments in response to the Commission’s *Notice*¹ concerning implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)² as it relates to the availability of emergency information to the blind and visually impaired. DIRECTV supports the Commission’s continuing efforts to make video content more accessible to people with audio and visual impairments. It has been an active participant in the Commission’s efforts to implement the CVAA, in particular through its participation on the Video Programming Accessibility Advisory

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*, Notice of Proposed Rulemaking, 27 FCC Rcd. 14728 (2012) (“*Notice*”).

² Pub. L. No. 111-260, 124 Stat. 2751 (2010). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

Committee (“VPAAC”) Working Group 3, which developed the portions of the VPAAC’s Second Report addressing access to emergency information.³

The *Notice* proposes to require broadcasters that provide “crawls,” “scrolls,” and similar visual-only information in response to localized emergencies to also provide an aural version of this information on the secondary audio channel used for video description or other services. Multichannel video programming distributors (“MVPDs”), in turn, would be required to pass that information along to viewers. DIRECTV supports this proposal. Where DIRECTV already carries such additional audio channels made available from the broadcaster, it could implement such a regime as soon as broadcasters and equipment manufacturers are able to do so. Such a regime would also eliminate the complexity, duplication, and errors that would arise were MVPDs instead asked to themselves track and translate broadcast scrolls in real time.

DIRECTV expects implementation of such a regime to be relatively straightforward. DIRECTV currently carries the secondary audio of the top four network affiliated stations and PBS in each market, at a minimum. And, where DIRECTV already carries the secondary audio of a station, it is a relatively simple process to transmit any audio emergency information provided to DIRECTV by that station in its secondary audio stream. Not every broadcaster currently offers secondary audio, however. If hundreds of broadcasters suddenly begin using a secondary audio stream only to provide emergency information, DIRECTV would not have the capacity on its spot beams to include all streams, as it would need to dedicate any entire audio stream full-time for each such station regardless of how little it would be used. Given Congress’s specific recognition of DBS capacity constraints, not to mention the longstanding and

³ See Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: Access to Emergency Information (Apr. 9, 2012) (“Second VPAAC Report”) (*available at* <http://vpaac.wikispaces.com/>).

undisputed record evidence before the Commission of such limitations, the Commission should confirm in this proceeding its prior finding that where a DBS provider does not have capacity on its spot beams to add new secondary audio streams, it does not have the “technical capability” to provide aural emergency information on these channels.

DISCUSSION

The CVAA requires the Commission to “identify methods to convey emergency information” to the visually impaired,⁴ to issue regulations requiring relevant entities to distribute emergency information to the visually impaired,⁵ and to ensure that apparatus can decode such information (along with video description services) properly.⁶ This proceeding focuses entirely on emergency information that is *not* provided in the video portion of a newscast—and for which the information is thus not already provided aurally as part of the program’s primary audio stream.⁷ Rather, it focuses on emergency information that is provided only visually, and in particular on “crawls” provided by broadcasters⁸ for localized situations such as weather alerts and the like.⁹ As the Commission explains, such crawls are today accompanied by three aural tones, designed to alert individuals with visual impairments that they must take some other action (such as turning on the radio) to learn more about the emergency.¹⁰

⁴ 47 U.S.C. § 613(g)(1).

⁵ *Id.* § 613(g)(2).

⁶ *Id.* § 303(u)(1).

⁷ *Notice*, ¶ 4

⁸ As far as DIRECTV is aware, neither national cable channels nor regional sports networks provide non-aural emergency information on a localized basis “primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.” 47 C.F.R. § 79.2(b)(2). DIRECTV does not provide such emergency information.

⁹ *Notice*, ¶ 4.

¹⁰ *Id.*, citing 47 C.F.R. § 79.2(b)(1)(iii) (“Emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.”).

For their part, MVPDs such as DIRECTV have no role whatsoever in the creation or management of this video-only information. It is provided to MVPDs as part of a broadcaster's video feed, and MVPDs simply carry the feed with no adjustment to it. Indeed, as a matter of copyright law, MVPDs are generally *prohibited* from altering this feed.¹¹

Today's "aural tone" formulation has its limitations, however, and the Commission expresses concern that the visually impaired might receive inadequate or untimely access to emergency information.¹² One way to address this concern would be for broadcasters to provide the emergency information contained in a crawl in aural form on a secondary audio channel. As the Commission points out, however, neither broadcasters nor the MVPDs that retransmit broadcast programming to the majority of the public have unlimited capacity for additional audio channels. The Commission explicitly recognized this issue in its recent adoption of video description rules.¹³ It thus created an exemption to the requirement to offer video description on a secondary audio channel where that channel is already being used for program-related content.¹⁴

The Commission thus proposes to require entities to make visual-only emergency information available aurally through simultaneous placement on a secondary audio stream *that*

¹¹ See 17 U.S.C. § 111(c)(3) (prohibiting willful alteration by cable operators); 17 U.S.C. § 122(e) (prohibiting willful alteration by satellite carriers).

¹² *Notice*, ¶ 4.

¹³ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, 26 FCC Rcd 11847, ¶ 31 (2011) ("2011 Video Description Order") (finding that, under a requirement to provide video description in all cases, "stations and systems would replace some other program-related content with video description to comply with the pass-through requirement, potentially depriving audiences, including in many instances non-English speaking communities who use the second audio stream to receive Spanish-language programming, of a valuable service.").

¹⁴ *Id.*

*already exists.*¹⁵ This approach is derived from the Second VPAAC Report, which recommends that “emergency information conveyed visually by crawl or scroll be also conveyed aurally utilizing the same audio stream as the video description audio stream.”¹⁶ Under this approach, the broadcasters providing visual-only information would themselves place an aural version of such information on the secondary audio stream on which they now offer video description or other services such as a Spanish language feed. MVPDs such as DIRECTV would then pass this information along to viewers as if it were any other type of secondary audio content.

DIRECTV supports the Commission’s approach of employing secondary audio streams that already exist. DIRECTV already carries at a minimum the secondary audio stream of affiliates of the four major networks and PBS in the markets where it provides local service. It is prepared to pass through whatever categories of aural emergency information the Commission deems appropriate for such stations.¹⁷ And, while it may take some time for broadcasters to install equipment necessary to comply with the proposed requirement and for manufacturers to produce consumer equipment capable of decoding and displaying this content,¹⁸ DIRECTV would likely be able to comply immediately thereafter with no material changes to its equipment.¹⁹

¹⁵ *Notice*, ¶ 7.

¹⁶ Second VPAAC Report at 10-11 (emphasis added).

¹⁷ *See Notice*, ¶ 11 (seeking comment on whether to update the Commission’s list of “emergency information”); *id.*, ¶ 13 (seeking comment on whether the aural information must be “identical to that presented textually”).

¹⁸ *See id.*, ¶ 27 (seeking comments on the appropriate deadline by which the Commission should require apparatus to meet the requirements adopted as part of this proceeding, and noting that the Commission has previously imposed a two-year deadline for apparatus requirements, for example, in the *IP Closed Captioning Order*), citing *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, 27 FCC Rcd 787, ¶ 122 (2012) (“*IP Closed Captioning Order*”).

¹⁹ *See id.* § III.B (inviting comment on a variety of issues related to apparatus used to decode and make available aural emergency information).

The Commission’s proposed approach has other merits, as well. One is efficiency. Since broadcasters themselves create crawls and scrolls in the first place, they are in by far the best position to convert such information into aural form. MVPDs, by contrast, are in a much worse position to do so.²⁰ First, requiring MVPDs to translate broadcaster crawls into aural form would needlessly duplicate work that broadcasters will already have done in order to comply with the rule themselves. Second, such an alternative would also require MVPDs to engineer expensive systems to detect automatically and in real time when broadcasters run crawls (a virtual impossibility for an entity such as DIRECTV that carries nearly 1500 broadcasters nationwide).²¹ Third, such an alternative would also introduce the possibility of “translation errors” as multiple MVPDs attempted to translate broadcast-generated emergency information, potentially achieving different results.²²

DIRECTV has one potential concern with the Commission’s proposed approach. DIRECTV passes through the secondary audio channel of every station that offers it to DIRECTV today, but not every station yet provides such a channel (nor is every station required to do so). As the Commission is aware,²³ if hundreds of stations were to add new audio channels tomorrow for transmission of emergency information, DIRECTV would not have sufficient

²⁰ See *Notice*, ¶ 16 (seeking comment on the roles that video programming distributors, programming providers, and owners should play in ensuring that emergency information is delivered in an accessible manner).

²¹ Just as it would be daunting to develop such a capability at the central uplink, it would also not be technically feasible to perform the complex functionality of detecting crawls and converting them to audio at the subscriber’s set-top box level.

²² Such translation would also raise legal concerns with respect to the “willful alteration” of broadcast content, potentially putting MVPDs in jeopardy of copyright infringement. Thus, even if the Commission limited an MVPD’s obligation to provide text-to-speech translation only for those stations that do not provide a secondary audio feed, the potential copyright implications would remain an issue, in addition to the significant technical challenges involved.

²³ See *Joint Comments of DIRECTV, LLC and DISH Network L.L.C.*, MB Docket No. 11-43 (Apr. 28, 2011) (describing capacity limitations of DBS Providers, and urging the Commission to maintain the so-called “SAP exception” to the video description rules).

capacity on its spot beams to carry all of them. Until now, DIRECTV's local spot beam capacity has grown organically (through incremental improvements in compression and modulation technologies) as the number of local stations adding video description channels has increased incrementally. Were Commission action in this proceeding to result in stations adding audio channels *en masse*, however, DIRECTV simply could not accommodate the additional demands and remain in compliance with its "carry-one, carry-all" obligations.²⁴

Nor, for that matter, would it make any sense to require DIRECTV to set aside the capacity for numerous new secondary audio feeds as part of this proceeding. Were a station to add a secondary audio feed solely for the purpose of providing emergency alerts, it would use this feed only a small fraction of the time. But DIRECTV would have to reserve the capacity for the feed *all* the time, as one can never know when an emergency might occur. Applying the proposed pass-through mandate to numerous additional feeds would thus require DIRECTV to set aside capacity it now uses to provide local service for a capability that would of necessity render the capacity fallow the vast majority of the time.

Fortunately, however, Congress sought to prevent this very eventuality. It recognized that DBS operators may face unique technical challenges pertaining to compliance with Section 203 of the CVAA, including capacity constraints on spot beams used to deliver broadcast signals²⁵ It did so in light of the undisputed record evidence before the Commission of capacity limitations on DBS spot beams.²⁶ Accordingly, DIRECTV requests that DBS providers be

²⁴ 47 U.S.C. § 338(a).

²⁵ *See Notice*, ¶ 21 n.90.

²⁶ *See, e.g., Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd. 5351, ¶¶ 7-8, 11 (2008) (confirming the "serious technical difficulties" faced by satellite carriers in retransmitting the signals of thousands of local broadcast stations throughout the country, finding that "the capacity used

