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**Barbara S. Esbin**  
Admitted in the District of Columbia

March 7, 2013

**Via ECFS**

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

**Re: American Cable Association Notice of Ex Parte; In re 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 March 4, 2013, Ross Lieberman, of the American Cable Association (“ACA”); Elvis Stumbergs and the undersigned, counsel to ACA, met with Michelle Carey, Mary Beth Murphy, Elliot Greenwald, Maria Mullarkey, Jeffrey Neumann, and Diana Sokolow of the Media Bureau and Rosaline Crawford of the Consumer and Governmental Affairs Bureau to present ACA’s views on the Commission’s proposals for implementation in the above-captioned rulemaking of the provisions in the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) requiring that emergency information provided visually in on-screen crawls during non-news broadcast programming be made more accessible to the blind or visually impaired.<sup>1</sup> As described further below, ACA recommended that the Commission provide relief from these mandates for operators of hybrid digital/analog systems by allowing them to employ alternative means of compliance, to provide an exception from the rules for operators of all-analog systems of 1,000 subscribers or fewer, and to delay requiring all-analog systems of more than 1,000 subscribers to comply for three years.

ACA discussed the NRPM’s proposal to require video programming distributors to make emergency information available on a secondary audio stream, if that information is provided

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<sup>1</sup> See *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*, Notice of Proposed Rulemaking, 27 FCC Rcd 14728 (2012) (“NPRM”) (proposing means of implementing Section 202 of the CVAA requiring that the Commission identify methods to convey emergency information in a manner accessible to individuals who are blind or visually impaired and promulgate regulations that require, inter alia, video programming providers and distributors to convey such emergency information in a manner accessible to individuals who are blind or visually impaired).

visually in programming that is not a newscast, and highlighted the reasons why some of ACA's smaller members lack the ability to pass through a secondary audio programming stream.<sup>2</sup>

ACA explained that the cable industry is in the middle of transitioning from delivering programming in analog to delivering programming in digital – a self-funded technological overhaul that began more than a decade ago, and may not be fully completed for another decade. As such, there are primarily three categories of cable systems in operation today: all-digital, hybrid digital/analog, and all-analog. Some cable systems have already made the transition to all-digital. However, most cable systems are in the middle of the transition, and operating hybrid digital/analog systems where all channels are offered in digital, with some channels simulcast in analog for customers receiving service on an analog television set without a set top box. There are also some cable systems that have yet to transition away from an all-analog platform. The operators of these systems either have plans to offer some digital services in the near future, or no plans to transition because they see no return on such an investment. Absent some significant change in the market or in their regulatory burdens, most of these all-analog systems will likely shut down in the future.

ACA described factors that often determine whether a cable system is passing through the secondary audio program (“SAP”) of the broadcast signals. ACA explained that cable operators distributing broadcast signals in digital format – either over an all-digital or hybrid digital/analog systems – pass through the SAP along with the primary video and accompanying audio. However, some cable operators maintaining hybrid digital/analog or all-analog systems who also, or only, deliver broadcast signals in analog may not have equipment that permits the pass-through of SAP.<sup>3</sup> Moreover, ACA explained that systems with fewer subscribers are less likely to have equipment that permits the pass-through of the SAP on their analog service than systems with more subscribers.

ACA described how challenging financial conditions have affected infrastructure investment by smaller cable systems. Operators of systems serving very small numbers of subscribers, regardless of network configuration, have faced financial and regulatory burdens over a period of many years that have made it difficult to stay profitable, at best, or even just to remain in business. These challenges have only grown greater in recent years, and show no signs of letting up. When spending capital on headend equipment, these operators have tended to purchase equipment with only the functionality absolutely necessary to permit them to meet their customers' most pressing demands and to comply with the law. This cost-effective approach, however, has resulted in many systems never investing in equipment capable of passing through SAP on their analog service, either before or after the digital transition.<sup>4</sup>

For operators of smaller systems, whether hybrid digital/analog or all-analog, incapable of passing through the SAP on their analog service, the cost of obtaining the necessary equipment can be prohibitive. ACA noted that some hybrid digital/analog systems serve very few subscribers, and having to purchase equipment necessary to pass through the broadcasters' SAP in analog would not be the most cost effective way to ensure their blind or visually impaired customers receive the emergency information, and would also significantly

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<sup>2</sup> NPRM ¶ 9.

<sup>3</sup> Most operators of hybrid digital/analog systems likely have the equipment to pass-through a secondary audio program of a broadcaster.

<sup>4</sup> After the digital transition, these systems did not purchase equipment for down-converting broadcasters' digital signals to analog in a manner that would permit them to pass through SAP on their analog service.

delay their transition to all-digital platforms. ACA also noted that for the smallest all-analog systems, purchasing the necessary equipment to offer the broadcasters' SAP on their analog service would not be reasonable under any circumstances and that requiring the purchase of such new equipment would very likely result in the majority of these systems shutting down completely, a result detrimental to all subscribers, whether blind, visually impaired or not. As a result, ACA urged the Commission not to adopt a one-size-fits-all regulation that forces operators of these smaller systems, whether hybrid digital/analog or all-analog, to purchase equipment in order to be able to offer SAP with their analog service. Instead, ACA suggested that the Commission consider alternative means of compliance that would be more cost effective for affected operators of hybrid digital/analog systems, to create an exception for the smallest all-analog systems, and delay application of the rule to all-analog systems with more than 1,000 subscribers.

Specifically, ACA recommended that the Commission take the following measures with respect to the obligation of video programming distributors to make emergency information more accessible:

- Permit hybrid digital/analog systems that do not have the equipment to pass through the broadcast SAP on their analog service the option of making emergency information accessible to blind or visually impaired customers through that system's digital service by providing eligible customers with set-top boxes at no charge for up to three analog television sets in their home at the time of the request. Operators would provide notice of this offer to all subscribers.
- Provide an exception for all-analog systems that serve 1,000 or fewer subscribers and lack the equipment to pass through broadcast SAP.
  - When an all-analog system is upgraded to hybrid digital/analog service, the exception would no longer apply and the system would need to meet the obligation to make emergency information accessible, the same as any other hybrid digital/analog system.
- Defer for three years application of the emergency information pass-through requirement for all-analog systems with more than 1,000 subscribers.

ACA offered the following technical background and policy rationale for its recommendations.

**Some smaller cable systems lack the equipment necessary to pass through the broadcasters' SAP on their analog service and the costs of adding such capability are more than minimal.**

The emergency information NPRM cited the VPAAC Second Report's finding that cable MVPDs, including cable operators, "are technically capable of providing access to emergency information through the secondary audio stream" but asked whether there are "technical capability issues that should be taken into account in the context of requiring emergency information to be provided on a secondary audio stream."<sup>5</sup> For the reasons set forth below,

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<sup>5</sup> NPRM ¶¶ 9, 10. Although the NPRM proposed use of the secondary audio streams of broadcasters to provide the emergency information to make emergency information appearing in an on-screen crawl during non-news broadcasts accessible to the blind or visually impaired, it also sought comment on

some smaller cable systems do not have the equipment necessary to pass through the SAP of the broadcasters on their analog service, and the Commission should take this into account when promulgating its regulations to implement the emergency information rules.

To provide SAP for subscribers receiving analog service, a cable system needs equipment that performs two steps. First, the distributor needs to have the equipment capable of receiving a digital broadcast signal and down converting it to analog with the SAP intact. Second, the distributor needs to have the equipment to retransmit that analog signal through their cable plant to their customers with the SAP intact. If the requisite equipment is not already present in the headend, performing both steps would require upgrades for cable systems, on a per-channel basis.

For some cable systems, the first step is a problem because the system receives broadcast signals over the air that may contain SAP, but lacks the necessary equipment in their headends to down convert the signal to analog and keep SAP intact.<sup>6</sup> 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.<sup>7</sup> ACA has learned that some cable systems, both hybrid digital/analog and all-analog, particularly those that are smaller, do not have such receiver/decoders.<sup>8</sup>

The second step in passing through SAP similarly presents a problem for some cable systems, both hybrid digital/analog and all-analog, because they do not have a Broadcast Television Systems Committee (“BTSC”) stereo modulator with SAP capability. Many cable systems continue to rely on legacy National Television System Committee (“NTSC”) monaural modulators that can only offer a single audio stream from the broadcaster.<sup>9</sup> These NTSC modulators take the audio accompanying the primary video received from the broadcaster over

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whether technical capability is an issue, and if so, how the Commission should consider revising the proposed emergency information rules. *Id.* at ¶ 10.

<sup>6</sup> 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 .

<sup>7</sup> 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.

<sup>8</sup> 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 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.

<sup>9</sup> 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 *In the Matter of Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Comments of National Cable Television Association, at 16 (filed Feb. 23, 2000).

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.<sup>10</sup>

To determine the extent to which ACA members lack the equipment necessary to pass through the SAP of broadcast stations, ACA conducted a member survey from February 25 through March 1, 2013. ACA received responses representing 184 different ACA member companies.<sup>11</sup> Of the 184 companies, 103 responded that they operate at least one cable system that still delivers broadcast signals using monaural audio equipment.<sup>12</sup> In total, the 103 companies reported that they use monaural audio modulators in 500 systems. Of these 500 systems, 326 were all-analog systems. The remaining systems are hybrid digital/analog systems that would be expected to deliver broadcast SAP over their digital service, but cannot deliver the SAP over their analog service.

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. ACA has learned from one vendor popular among small cable operators that the low cost option for new equipment capable of passing through SAP on their analog service would cost around \$1,700 per channel plus labor.<sup>13</sup> 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 the 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. While larger hybrid digital/analog systems may find it affordable to comply with the emergency information pass through requirement by purchasing the requisite equipment, smaller hybrid digital/analog systems and all-analog operators will find it cost-prohibitive.

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<sup>10</sup> 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.

<sup>11</sup> In some instances, ACA received responses from more than one individual from the same company.

<sup>12</sup> 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.

<sup>13</sup> 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 \$3000 per channel. See *In the Matter of Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, ¶ 27 (2000).

**The survey of ACA's members confirms that requiring smaller cable systems to purchase equipment to pass through broadcast SAP containing emergency information for their analog service would be a significant financial burden and not an efficient use of capital for cable systems in the process of transitioning to all-digital service.**

In addition to surveying ACA members about the extent to which they are technically incapable of passing through the SAP of the broadcast stations on their analog service, ACA asked its members to explain why it would be a financial burden to upgrade their equipment to provide SAP. The member responses illustrate the significant financial burden these operators would face if required to purchase the equipment necessary to pass through broadcast SAP over their analog service, and how such investments would not be an efficient use of capital in light of some operators' intentions to transition to all-digital systems. The following is a sample of the responses received that were discussed during the meeting:<sup>14</sup>

***Responses reflecting that the emergency information mandate would, or would likely, result in the operator shutting down its system or no longer offering broadcast stations on the system in analog:***

- "Very rural systems with small subscriber growth. This would require some of the systems to be shut down."
- "Some of these systems are border-line now with regards to operating costs and profit/loss especially after the FCC already forced us to spend \$6K to \$7K in each system to install EAS equipment. In some cases, this would force our company to simply shut down our headend and plant and discontinue services to some of these communities."<sup>15</sup>
- "We are not currently operating every month in the black. Any month that we have a major (sat receiver, modulator, line amp, etc.) equipment failure, we lose money. To replace all our monaural modulators would break us."

***Responses reflecting the fact that those systems in which upgrades would be necessary to satisfy the emergency information mandate are making either no profit or minimal profit:***

- "This system is so small we are actually not making a profit now."
- "There is no profit to spend. There is no maintenance budget. There is no equipment budget."
- "Have shown operating losses for 2011 and 2012."

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<sup>14</sup> Minor typographical errors have been corrected in the quotes.

<sup>15</sup> In this response and others, the cable operators are referencing the Commission's recent Order requiring them to upgrade their emergency alert system ("EAS") equipment to be able to receive emergency alerts formatted in a "Common Alert Protocol" ("CAP") over the Internet. See *In the Matter of Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642 (2012). EAS CAP compliance required operators to either purchase entirely new CAP compliant equipment or to purchase intermediary devices that work in tandem with their legacy EAS equipment.

- “Our system is only a 450 [MHz] analog system. The system is only at a break even and has a high loss of customers.”
- “Very small system, replacing modulators would cost about 8 months system profit!”
- “I operate 3 small cable systems with income that barely pays our programming invoices and fixed monthly bills. Any additional capital expenditures would be a severe financial burden.”
- “This change would cost \$46 per sub. My profit margins would not support this level of expense. I am still trying to pay off the EAS upgrade.”

***Responses reflecting the burden would be felt by municipal cable systems as well:***

- “We are a City municipal owned cable system. We deal in a restricted budget...”
- “We are owned by the City and try to keep costs as low as possible.”

***Responses reflecting on-going transition of some operators to all-digital operations or the plan to go all-digital in the future:***

- “We are planning to update systems to all digital over time eliminating analog service. We do not plan to invest in more analog equipment.”
- “Beginning 2014 we’re looking at collapsing the analog tier. Any changes/purchases for analog equipment will strand capital.”
- “It will be useless to do this now because most systems will be all-digital within 5 to 10 years and digital channels are all stereo.”
- “We are a small operator and this is not a useful use of resources. We need to direct what limited resources we have towards going to an all digital platform. Plus a large number of our subscriber base is using the Clear QAM tuners in the TV to view the local broadcast stations.”
- “Hopefully, in 2014 we will be digital.”
- “We are in the process of offering our customers an all-digital lineup in the next 3-5 years and we will not need analog modulators after that project has been completed.”
- “We are very small and moving our facilities to digital broadcast which includes the stereo, it is foolish to spend what little capital we have to redo our analog broadcast for so few customers as we age out and move to clear QAM.”

**The Commission should take into account the significant financial impact and consequences of requiring all cable systems to pass through the SAP of the broadcast stations on their analog service.**

Hybrid Digital/Analog Systems. Many hybrid digital/analog systems still rely on legacy equipment (receiver/decoder and/or modulators) that cannot pass through a secondary audio programming stream on their analog service without incurring more than minimal costs per affected headend. Rather than force these smaller systems to invest their limited funds in analog service equipment that would become unnecessary once these operators move to all-digital distribution, ACA suggested that the Commission consider alternative means of compliance that can achieve the same goal of accessibility to emergency information for the blind or visually impaired as enabling a secondary audio stream on all distributed channels of video programming.

Specifically, ACA proposed that hybrid digital/analog systems lacking the necessary equipment to pass through broadcasters' SAP on their analog transmission would be afforded the option of making emergency information accessible to blind or visually impaired customers through that system's digital service by providing eligible customers with set top boxes at no charge to eligible customers for up to three analog television sets in their home at the time of their request.<sup>16</sup> To ensure that eligible subscribers are informed, operators of hybrid digital/analog systems would also provide notice of the offer to all subscribers. Cable system operators would be obligated to make the free set-top boxes available to an eligible customer until such time that (1) the cable system passes through the broadcasters' SAP over the analog service; (2) the cable system only provides broadcasters signal in digital; or (3) the customer no longer qualifies for receiving free set top boxes.<sup>17</sup>

ACA emphasized that the vast majority of cable subscribers receive broadcast signals in a digital format from all-digital or hybrid digital/analog systems and therefore are capable of receiving SAP, including access to any emergency information providing on the SAP. ACA also stressed the fact that many hybrid digital/analog systems offer broadcast SAP on their analog service. Therefore, permitting hybrid digital/analog systems that do not have the necessary equipment to offer the broadcast SAP on their analog service the option to comply with the accessibility requirement through an alternative means would likely only be considered by a limited number of hybrid digital/analog systems, and would likely only be utilized by smaller systems where the cost of updating their analog equipment would be the more costly option.

All-Analog Systems Serving 1,000 or Fewer Subscribers. ACA also explained the compelling need to create a simple exception from the emergency information requirement for all-analog systems that serve 1,000 or fewer subscribers and do not have the equipment to pass through the broadcaster's SAP.

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<sup>16</sup> The required set-top box would provide the eligible customer with access to the same channels that the subscriber received on their analog television set without using a set top box. A digital terminal adapter ("DTA") may qualify as a set top box that meets this definition. There should be no obligation for the cable operator to provide a more advanced set top box at no charge.

<sup>17</sup> A subscriber may no longer qualify to receive set-top boxes at no charge if there is no longer an individual in the subscriber's household that is blind or visually impaired, or if the household no longer has an analog television set receiving cable service.

To give a sense of why operators of all-analog systems would likely shut down their systems rather than purchase equipment necessary to offer the broadcaster's SAP, ACA provided data and information to show the small size of many of these all-analog systems. ACA members, who comprise more than 800 small and medium-sized multichannel video programming distributors, operate 987 all-analog systems in total that cumulatively serve a total of 203,000 subscribers. The average all-analog system serves only 206 subscribers, while the majority of all-analog systems serve even fewer subscribers.

<b>Total Number of Subscribers Served by All-Analog Systems</b>	<b>Number of All-Analog Systems</b>	<b>Average Number of Subscribers Served Systems in Group</b>
1-250	807	80
251-500	88	346
501-750	49	603
751-1000	20	859
More than 1000	23	2,667
<b>Total</b>	<b>987</b>	

As the chart shows, over eighty percent of the all-analog systems operated by ACA members serve 250 or fewer subscribers, and the average number of subscribers served by each of these smallest systems is 80. Moreover, ninety-seven percent of the all-analog systems operated by ACA members serve fewer than 1,000 subscribers. The 964 systems with less than 1,000 subscribers cumulatively serve a total of 141,000 subscribers.

ACA described the particular challenges faced by operators of all-analog systems with 1,000 or fewer subscribers. These systems have fewer customers over whom to spread common costs than larger operators, face rapidly escalating programming costs that are often higher than those incurred by larger operators on a per subscriber basis, have high fixed non-programming costs because they often serve in high cost rural and low-density markets, must comply with regulations that are often disproportionately burdensome, and contend with formidable competition from DBS operators. These operators are barely, if at all, profitable today.<sup>18</sup>

ACA explained that without the requested relief, the burden of compliance would likely result in many all-analog systems simply shutting down rather than investing the resources necessary in making them SAP-capable.<sup>19</sup> This outcome would provide no benefit to the blind

<sup>18</sup> See, e.g., *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, ¶ 118 (2000) ("The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers."); *In the Matter of Caribbean Communications Corp., Petition for Special Relief*, Memorandum Opinion and Order, 17 FCC Rcd 7092, ¶ 14 (2002) (noting that systems with more than 15,000 subscribers average 68.7 subscribers per mile, while small systems provide service on average to only 35.3 subscribers per mile.).

<sup>19</sup> See Mike Farrell, *Allegiance to Shut Down Some Kansas Systems: Report*, Multichannel News, Feb. 8, 2013, <http://www.multichannel.com/cable-operators/allegiance-shut-down-some-kansas-systems-report/141635> (reporting shut down of 20 small cable systems that are no longer profitable); *Allegiance Communications to Discontinue Cable TV Service in Howard County*, Southwest Arkansas Radio, <http://www.southwestarkansasradio.com/local-news/778-allegiance-communications-to-discontinue->

and visually impaired community. Blind or visually impaired cable subscribers would be left without cable access altogether. Moreover, the system closure would also leave non-visually impaired individuals in the community without cable access. 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. The Commission should take steps to avoid such an outcome.

ACA noted that these smaller systems' severe constraints justify grant of an outright exception, rather than subjecting them to a waiver process. It would be unduly burdensome to require these operators to take more complex action, such as filing a formal waiver and retaining outside legal assistance to pursue this relief when an automatic exception can achieve the same end.

ACA stressed that its proposed exception for all-analog systems with 1,000 or fewer subscribers would impact a relatively small number of MVPD subscribers. Subscribers of ACA members' all-analog systems with fewer than 1,000 subscribers represent just 0.14% of all MVPD subscribers nationwide, and some of these all-analog systems have the capability to pass through the SAP of the broadcast stations. Therefore the number of customers of ACA members that would be affected is likely lower. ACA also made the point that customers of these systems would not be left without other options to receive the emergency information from a pay-TV provider, on the assumption that DirecTV or DISH Network service would be available to them, and/or that these customers could potentially get the broadcast signals containing the emergency information over the air.

Finally, if any of these all-analog cable systems were to find a way to upgrade to become a hybrid digital/analog system at some point in the future, the exception would no longer apply and they would need to comply with the emergency information pass through rule the same as any other hybrid digital/analog system.

All-Analog Systems Serving More than 1,000 Subscribers. ACA noted that the all-analog systems with more than 1,000 subscribers are likely to upgrade their systems within the next three years to offer some digital services, including digital broadcast service. Such investments would permit these systems to offer the SAP of the broadcasters and comply with the emergency info mandate by making available free set top boxes to their blind or visually impaired customers, and providing notice. For this reason, ACA suggests that the Commission delay application of the emergency info mandate on all-analog systems that have more than 1,000 subscribers for at least three years.

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cable-tv-service-in-howard-county (reporting discontinuation of service to rural areas because of "economic downturn and a reduced subscriber base, making it no longer financially viable to continue operations"); Mike Farrell, *Small Cable Operators Tread Water over High Programming, Hardware Costs*, Multichannel News, Feb. 4, 2013 (explaining the significant economic challenges faced by small cable operators and noting that "since October 2005 the number of cable systems has declined by 26% from 7,208 to 5,312, including sales, shutdowns and headend consolidations" and that "for systems with fewer than 10,000 subscribers, the percentage drop has been even greater"). The Commission's recent Viewability Order makes it possible to stop carrying analog versions of must-carry channels. See *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Fifth Report and Order, 27 FCC Rcd 6529, ¶ 6 (2012).

ACA's requests are consistent with concerns raised by other commenters. CenturyLink, NAB, and the direct broadcast satellite providers emphasized the technical and operational constraints on broadcasters and MVPDs that operate systems with legacy equipment in implementing these new requirements.<sup>20</sup> CenturyLink and NAB also specifically requested that the Commission adopt a technical capability exception for emergency information, similar to that adopted for video description; DirecTV has advocated for a streamlined waiver process; and DISH has also requested that the Commission consider the technical capability of passing through emergency information through SAP.<sup>21</sup>

\* \* \*

For the foregoing reasons, ACA urged the Commission to afford the requested relief for operators of hybrid digital/analog and all-analog systems. By taking these targeted measures, the Commission can achieve the goals of making emergency information provided by broadcasters in an on-screen crawl accessible to the blind or visually impaired community without causing undue financial burdens to smaller operators or the suspension of analog cable service to smaller and harder to serve communities.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely



Barbara Esbin

cc (via email): Michelle Carey  
Mary Beth Murphy  
Elliot Greenwald  
Maria Mullarkey  
Jeffrey Neumann  
Diana Sokolow  
Rosaline Crawford

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<sup>20</sup> CenturyLink Reply Comments at 3 ("In some cases, existing infrastructure may not support any use of secondary audio streams"); NAB Comments at 10-12 (filed Dec. 18, 2012) (explaining that not all broadcast stations have the technical capability to create and route an additional audio stream, installation of a secondary audio stream alone has proven to be costly and complex); DirecTV Comments at 7-8; DISH Network Comments at 4.

<sup>21</sup> CenturyLink Reply Comments at 3 ("CenturyLink agrees with DIRECTV and DISH Network that the Commission should clarify that the "technical capability" exception found in existing video description rules will apply equally to the new emergency information requirement"); NAB Comments at 10-12 (filed Dec. 18, 2012) ("the Commission should ... incorporate a technical capability exception as it did for video description"); Letter from William W. Wiltshire, Counsel to DirecTV, Wiltshire & Grannis, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107, at 1-2 (requesting streamlined waiver by certification process for DBS providers lacking capacity on a spot beam to support carriage of a secondary audio stream); DISH Network Comments at 4.

Elizabeth Andrion  
Lyle Elder  
Erin McGrath  
Dave Grimaldi  
Alex Hoehn-Saric  
Matthew Berry