



A Professional Limited Liability Company

1333 New Hampshire Ave., NW, Fl 2
Washington, DC 20036
Telephone: (202) 872-6811
Facsimile: (202) 683-6791

Chicago Office
307 North Michigan Ave., Suite 1020
Chicago, Illinois 60601
Telephone: (312) 372-3930
Facsimile: (312) 372-3939

St. Louis Office
1714 Deer Tracks Trail, Ste 215
St. Louis, MO 63131

Barbara S. Esbin
Admitted in the District of Columbia

March 22, 2013

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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 20, 2013, Ross Lieberman, of the American Cable Association (“ACA”); Elvis Stumbergs and the undersigned, counsel to ACA, met with Michelle Carey, Mary Beth Murphy, Steven Broecker, Maria Mullarkey, and Diana Sokolow of the Media Bureau, and Karen Peltz Strauss, Rosaline Crawford and Eliot Greenwald of the Consumer and Governmental Affairs Bureau to discuss ACA’s proposals to provide relief for smaller cable operators that lack the ability to pass through a secondary audio programming (“SAP”) stream on their analog service from the NPRM’s proposed requirement that video programming distributors make emergency information accessible.¹

ACA urged the Commission to adopt the relief that it suggested in its March 7 Ex Parte letter. Specifically, ACA reiterated its request that the rules (i) provide hybrid analog-digital systems that lack the equipment necessary to encode or pass through broadcast SAP on their analog service the option to comply with the pass-through requirement 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, as well as notice of this offer, that would enable them to receive SAP over the operator’s digital service; (ii) provide an exception from the pass-through requirement for all-analog systems that serve 1,000 or fewer subscribers and lack the equipment to pass through broadcast SAP; and (iii) defer for three years application of the pass-through

¹ See *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 ¶ 9 (2012) (“NPRM”); Letter from Barbara E. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107 (filed Mar. 7, 2013) (“March 7 Ex Parte”).

requirement for all-analog systems with more than 1,000 subscribers.² ACA noted that when an all analog-system is upgraded to hybrid analog-digital service, the exception or deferral would no longer apply and the system would need to make emergency information accessible in the same manner as any other hybrid system.³ Such relief would also be consistent with Commission precedent.⁴

Adopting this relief now in the current rulemaking rather than granting it later through a further rulemaking or waiver process would save the limited resources of the Commission, as well as those of parties that would need to participate in a subsequent rulemaking or waiver process. ACA suggested, however, that if the Commission declines to provide explicit relief for these operators in its forthcoming order, that it address the possibility, and not foreclose the opportunity, for operators to obtain the specific relief proposed by ACA through a further rulemaking or the filing of a waiver petition.

If the Commission opts to consider relief for operators of smaller cable systems through a waiver process, ACA suggested that the Commission explicitly welcome the filing of such petitions on behalf of similarly situated classes of systems to achieve relief comparable to that currently sought. To that end, ACA specifically recommended that the order invite consideration of waiver petitions from operators of all-analog systems without the capability to pass-through SAP to defer or waive their compliance with the NPRM's proposed rule. Similarly, the Commission could welcome petitions from operators of hybrid analog-digital systems whose analog service cannot pass through SAP that would allow them to comply with the proposed rule through alternate means (e.g., by offering blind or visually impaired subscribers equipment at no additional cost capable of accessing their digital service that passes through SAP). ACA also suggested that the Commission adopt a policy of ruling on such waiver petitions within 180 days of the public notice establishing the comment cycle.⁵

Although not as efficient as a rulemaking, the filing of waivers for classes of similarly situated systems would be more administratively efficient for the Commission than individual petitions and case-by-case analysis. It would ease the burden on smaller operators who may seek to have a representative entity file on their behalf, as well as facilitate the participation of advocates for the blind and visually impaired by not requiring them to respond to potentially

² March 7 Ex Parte at 3.

³ *Id.*

⁴ See, e.g., *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Fifth Report and Order, 27 FCC Rcd 6529 ¶¶ 19-23 (2012) (providing temporary relief for smaller operators of small systems from being required to invest in equipment to carry broadcast signals in HD); *Cablevision Systems Corporation's Request for Waiver of Section 76.630(a) of the Commission's Rules*, Memorandum Opinion and Order, 25 FCC Rcd 134 ¶¶ 5, 15 (2010) (granting waiver of basic tier encryption prohibition conditioned on operator providing set-top boxes or CableCARDs at no charge to certain classes of affected basic-only subscribers who rely on access to unencrypted basic-only service).

⁵ See, e.g., *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 ¶¶ 197 (2011) ("ACS Order") (adopting a policy of evaluating waiver petitions within 180 days).

hundreds of waiver requests with each providing data and information about what warrants their waiver.⁶

ACA also suggested that the order acknowledge the technical issues identified by ACA concerning the pass-through of emergency information in SAP; identify the various classes of affected operators and systems; and note that requiring the smallest all-analog systems, which are unable to pass through broadcast SAP, to comply with this obligation would likely force many of these systems to shut down and that such a result would provide no benefit to the blind or visually impaired customers of these systems. Moreover, ACA urged that the order acknowledge that requiring smaller hybrid analog-digital systems to pass through broadcast SAP on their analog service (in addition to their digital service) may not be the most cost efficient means of making emergency information accessible to all of the blind or visually impaired customers of these systems, and in such instances, would divert scarce resources from continuing the transition of these systems to all-digital service—a transition that would be of benefit to all customers.

In conclusion, ACA noted that by adopting the targeted measures it has proposed, the Commission can meet its statutory obligation of making emergency information provided by broadcasters in an on-screen crawl 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.

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
Steven Broeckaert
Maria Mullarkey
Diana Sokolow
Karen Peltz Strauss
Rosaline Crawford
Eliot Greenwald

⁶ Commission precedent also supports granting class waivers. See, e.g., ACS Order ¶¶ 193-94.