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Barbara S. Esbin
Admitted in the District of Columbia

April 2, 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 Communication; *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:

This letter is filed on behalf of the American Cable Association (“ACA”) to further refine proposals ACA has previously submitted to the record concerning 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 continues to believe that the best course of action is for the Commission in the current rulemaking to acknowledge the technical issues identified by ACA² and to adopt relief

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 S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107 (filed Mar. 7, 2013) (“March 7 Ex Parte Letter”); Letter from Barbara S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107 (filed Mar. 22, 2013) (reflecting Mar. 20 ex parte meeting with staff of Media and Consumer and Governmental Bureaus) (“ACA Mar. 22 Bureau Ex Parte Letter”); Letter from Barbara S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107 (filed Mar. 22, 2013) (reflecting ex parte meetings, respectively, with Matthew Berry, Chief of Staff to Commissioner Pai and Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel) (“ACA Mar. 22 Ex Parte Letter”).

² In its filings, ACA has suggested that the order acknowledge the technical issues identified by ACA concerning the pass-through of emergency information in SAP and identify the various classes of affected operators and systems. ACA also encouraged that the order note that requiring all-analog systems, which are unable to pass through broadcast SAP, to comply with a one-size-fits-all obligation would likely force many of the smallest of these systems to shut down and that such a result would provide no benefit

proposed by ACA for operators of smaller cable systems who are unable to pass through SAP containing a broadcaster's aural emergency information.³

ACA has continued to examine how best to achieve the goal of making the emergency information at issue accessible to blind and visually impaired cable customers, and has refined its proposal concerning all-analog systems lacking the capability to pass through SAP. Specifically, ACA requests that the Commission grant all all-analog systems that lack the equipment to pass through broadcast SAP an additional three years following the effective date of the emergency information pass-through requirement (assumed to be two years after publication of the order in the Federal Register) to come into compliance. At the end of the three-year deferral period, the Commission should make clear that it will consider petitions to extend the waivers for classes of similarly situated systems. Reasons for extension of the waivers may include financial constraints that have resulted in these systems being unable to upgrade their equipment, or impending plans to upgrade their equipment to allow digital service that would pass through SAP.

To ensure adequate consumer notification, ACA recommends that operators of all-analog systems unable to pass through SAP be required to notify subscribers by mail at least 30 days, but no more than 60 days, in advance of the effective date of the emergency information pass through requirement that the cable system serving the subscriber is unable to pass through aural emergency information because the system does not offer a secondary audio program with its analog cable service. ACA notes that the Commission adopted consumer notification requirements in its Basic Tier Encryption Order, and specified the content and timing of the notifications.⁴

to the blind or visually impaired customers of these systems. See, e.g., ACA Mar. 22 Bureau Ex Parte Letter at 2. 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. *Id.*

³ In its filings, ACA urged 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 requirement for all-analog systems with more than 1,000 subscribers. Further, ACA has 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. See, e.g., ACA Mar. 7 Ex Parte Letter at 3.

⁴ *Basic Service Tier Encryption, etc.*, Report and Order, 27 FCC Rcd 12786 (2012) ¶ 31. The required notification at minimum (i) provides the date the operator will start encrypting the cable basic service tier offering on the subscriber's cable system; (ii) the effect encryption will have on subscribers who have operator supplied equipment connected to their TVs and those who do not; (iii) instructions for actions to be taken by those who lack such equipment who lose the ability to view any channels on TVs not connected to operator-supplied equipment; (iv) a description of the operator supplied equipment that will be provided to eligible subscribers at no charge and the length of time it will be provided; and (v) instructions on how to receive more information about the no-charge equipment offer. The Commission mandated a 30 day advance notice to subscribers to permit them adequate time to avail themselves of the free device offers, as well as subsequent notifications of at least 30 days but no more than 60 days

With regard to smaller hybrid analog-digital systems that lack the equipment necessary to encode or pass through broadcast SAP on their analog service, ACA reiterates that adopting a one-size-fits-all mandate on these systems would not be in the public interest, and suggests that Commission can best address the concerns ACA raised and the relief it proposes by inviting the filing of class waivers on behalf of these systems.⁵

ACA again stresses 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

before the end of the free device transitional period. The Order also specified the contents of the subsequent notification, including the charges per device.

⁵ See ACA Mar. 22 Ex Parte Letter at 2.