

**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
)	
Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010)	MB Docket No. 11-43
)	

**COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”)¹ hereby responds to the Further Notice of Proposed Rulemaking (“*Further Notice*”) in the above-captioned proceeding.² The *Further Notice* seeks comment on whether certain programming services delivered by multichannel video programming distributors (“MVPDs”) to mobile and other devices should be covered by the emergency information and video description rules.³ It also

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$200 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

² See *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, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (“*Emergency Information Order*” or “*Further Notice*”).

³ See *Further Notice* ¶¶ 80-84.

revisits questions related to customer support and whether it should require a particular “tag” to identify the audio stream containing video description.⁴

Cable operators, as part of their existing services, increasingly are providing applications (“apps”) or other technologies that enable their subscribers to view linear programming within the home over the cable operator’s network.⁵ However, cable operators today typically pass through just a single IP audio stream to apps – the main audio stream – and most will need to redesign their equipment and services to enable pass through of a second IP audio stream. If the Commission decides to require the pass through of a second IP audio stream, it must provide sufficient time for operators to support this capability going forward.

I. CABLE OPERATORS SHOULD ONLY BE REQUIRED TO PASS THROUGH EMERGENCY INFORMATION FOR LINEAR PROGRAMMING DELIVERED TO MOBILE AND OTHER DEVICES.

A. Cable Operators Will Pass Through Emergency Information on a Secondary Audio Stream, But Should Not be Required to Make That Information Audible.

Section 202 of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) directs the Commission to adopt regulations “that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.”⁶ Beginning in May 2015, the rules implementing this provision will require cable operators to ensure that emergency information provided aurally in a second audio stream is passed through to customer television

⁴ See *id.* ¶¶ 85-86.

⁵ For example, Cablevision offers the Optimum App for iPad. See *id.* ¶ 80, n.346.

⁶ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 202(a) (as codified in 47 U.S.C. § 613(g)(2)) (“CVAA”).

sets.⁷ The *Further Notice* asks whether a cable operator or other MVPD “should be required to ensure that any application or plug-in that it provides to the consumer to access [linear video] programming is capable of making the emergency information audible on a secondary audio stream.”⁸

The Commission’s rules (Section 79.1) define a “video programming distributor” to include “[television broadcast stations, MVPDs], and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.”⁹ And “video programming” means “programming provided by, or generally considered comparable to programming provided by a television broadcast station that is distributed and exhibited for residential use.”¹⁰ Thus, a cable operator delivering linear broadcast stations containing emergency information (or any other linear video programming service that might provide an aural version of emergency information covered by the rules) within a subscriber’s home would be a “video programming distributor” for these purposes, even if the linear service is received through use of an operator-supplied app on a device owned by a consumer.¹¹

While cable operators would not object to applying the emergency information rules in these circumstances, the *Further Notice* appears to contemplate an additional requirement that

⁷ See 47 C.F.R. §79.2(b)(2)(ii).

⁸ *Further Notice* ¶ 80.

⁹ 47 C.F.R. § 79.1(a)(2).

¹⁰ 47 C.F.R. § 79.1(a)(1).

¹¹ The *Further Notice* asks whether the rules should apply outside of the home or when linear programming is delivered over the Internet. See *Further Notice* ¶ 80. The rules should apply only in the limited circumstances set forth above, both because of the limited scope of the statutory and regulatory definitions, and because of the nature of emergency information. As the Commission noted in the *Emergency Information Order*, “applying the rule broadly to cover all IP-delivered video programming, regardless of location, may not serve a useful purpose and may cause confusion to viewers in areas with no connection to the location of the emergency.” *Emergency Information Order* ¶ 8, n.28.

operators “mak[e] the emergency information audible on a secondary audio stream” on devices that they do not control.¹² The newly-adopted emergency information rule specifies that cable operators (and other VPDs) must ensure that “the aural representation of the emergency information (including the accompanying aural tone) gets *passed through* to consumers.”¹³ A requirement for cable operators to “mak[e] the emergency information *audible*” in the case of apps and plug-ins on customer-owned devices goes beyond this pass-through obligation and should not be adopted.

This proposal suggests a misunderstanding of operators’ role with respect to the provision of emergency information. Cable operators do not originate the type of “emergency information” addressed by the Commission’s new rule. Rather, cable operators simply pass along the aural emergency information contained in a secondary audio stream that is created by the originator of that information. Moreover, where cable operators provide equipment to their customers, the operator can ensure that this information gets passed through so that it is available on the viewers’ television sets. However, cable operators generally have no control over *non-leased* equipment that customers own. For these reasons, the Commission should not impose a requirement on cable operators beyond the existing pass through obligation and should not impose any additional obligation to make emergency information audible when received using operator apps.

B. The Commission Should Provide Operators Sufficient Time to Enable Them to Pass Through a Secondary Audio Stream to Apps on IP-Enabled Customer Devices.

Today, equipment deployed in most cable system headends enables cable operators to pass through the secondary audio stream contained in digital programming to a subscriber’s

¹² *Further Notice* ¶ 80.

¹³ 47 C.F.R. §79.2(b)(2)(ii) (emphasis supplied).

television set. But the pass through of a secondary audio stream to a mobile or other device in the home is a different, more complex, and more costly matter. Since, as noted, cable operators generally just pass through the primary audio stream to operator-provided apps, operators would have to acquire additional equipment and encoding to support the pass through of an additional audio stream in IP. Given the increasing number of innovative ways customers are accessing cable service in the home, operators may need to provide audio enhancements to many different apps created to serve a multiplicity of devices in the home. Development and implementation of this capability will be a complex and costly task.

Operators must have sufficient lead-time to provide any new capability that a pass through rule will require. The Commission provided broadcasters and VPDs two years after the emergency information rules were adopted to come into compliance.¹⁴ If the Commission were to adopt a requirement with respect to passing through emergency information for cable operator-supplied apps on consumer-owned devices, it should give operators at least the same amount of time – two years after adoption of any new pass through rule applicable to apps – to begin supporting this pass-through capability.

II. CABLE OPERATORS WILL PASS THROUGH VIDEO DESCRIPTION TO CONSUMER DEVICES IN THE HOME IF TECHNICALLY CAPABLE.

The *Further Notice* seeks to clarify MVPDs' video description obligations to the extent an MVPD allows subscribers to access "video programming" via tablets, laptops, PCs, smartphones or similar devices.¹⁵ Unlike other parts of the CVAA, where Congress clearly intended rules to apply to new technologies, Congress adopted a narrowly-focused video description provision, directing the Commission to reinstate rules that were adopted more than a decade ago – before

¹⁴ See *Emergency Information Order* ¶ 37.

¹⁵ *Further Notice* ¶ 83.

apps, tablets, and smartphones even existed – and providing the Commission authority only to study certain developments in this area.¹⁶ Thus, when cable operators began providing programming with video description in July 2012, those reinstated rules obviously did not specify how cable operator-supplied apps used for viewing linear video programming in the home should be treated.¹⁷

As noted above, cable operators today typically do not pass through a second audio stream to apps running on consumer-owned devices and will need to develop that capability prior to being able to pass through any information, including video description, in the second audio stream. Accordingly, cable operators generally are not “technically capable” today of passing through the video description contained on a secondary audio stream to second-screen IP-enabled devices in the home. If the Commission were now to clarify that the pass-through obligation applies to operator-supplied apps on consumer-owned devices, operators would, under the statute, generally not be required to comply with the obligation until they acquired the “technical capability” to do so. But the “technical capability” exception does not fully apply to systems that serve 50,000 or more subscribers.¹⁸ For those systems, a phase-in period for compliance with the newly-clarified requirement would be necessary. Such systems should not be required to come into compliance until two years after adoption of such clarification.

Ultimately, as operators develop this capability, video description and aural emergency

¹⁶ See 47 U.S.C. § 613(f)(3)(B) (as amended by CVAA § 202(a)).

¹⁷ We have previously explained that the provision of video description on video programming via the Internet is one of the areas intended for further inquiry – an inquiry the Media Bureau recently launched. See FCC, Public Notice, *Media Bureau Seeks Comment on Video Description in Video Programming Distributed on Television and On the Internet*, MB Dkt. No. 11-43, DA 13-1438 (June 25, 2013).

¹⁸ The video description rules as reinstated in most situations require MVPDs to “pass through” video description if the MVPD “has the technical capability necessary to pass through the video description” Where the MVPD system serves 50,000 or more subscribers, it must “provide” the top 5 cable networks that include video description. See 47 C.F.R. § 79.3(b)(4)-(5).

information can both be delivered in the same secondary audio stream to an operator-provided app on a customer-owned device.

In addition, as in the “emergency information” context, cable operators do not originate video description but, rather, simply pass along the video description contained in a secondary audio stream that is created by the originator of that programming. Where cable operators provide equipment to their customers, they can and do ensure that video description is passed through *operator-supplied equipment* so that it is available on viewers’ television sets. Cable operators, however, generally have no control over *non-leased* equipment that customers own and, therefore, should only be required to pass through video description to customer-owned devices without any additional obligation to make video description content audible on such devices.

III. THE COMMISSION SHOULD NOT ADOPT NEW CUSTOMER SERVICE REQUIREMENTS.

The *Further Notice* also seeks comment on whether it should require dedicated customer support services to assist customers who are blind or visually-impaired with accessing the secondary audio stream.¹⁹ As we explained previously, cable operators “have established procedures for addressing video description and other concerns, procedures that customer service representatives have been following since the [video description] rules went into effect [almost exactly one year] ago.”²⁰ In addition, NCTA has worked with our members over the course of the implementation of the CVAA to ensure awareness of the new video description rules and operators’ responsibilities. Once again, we request that the Commission allow those processes to

¹⁹ See *Further Notice* ¶ 86.

²⁰ NCTA Comments, MB Dkt. No. 12-107 at 14 (filed Dec. 18, 2012).

continue to work without mandating new requirements. The industry is making a good faith effort to comply with the rules, and is continuing its education efforts.

The *Further Notice* also again asks whether to require “a dedicated telephone number” to provide customer support and whether it should require the provision and publication of contact information for the resolution of consumer concerns, such as are required in the closed captioning rules.²¹ As we explained in comments filed with the Commission at the end of last year,

Nothing in the CVAA apparatus mandate provides the Commission authority to act in this area. Moreover, operators have experienced problems with the Commission’s process for handling captioning complaints, which requires operators to publicize a telephone number and other contact information for the immediate handling of captioning concerns. In some cases, publicizing a dedicated complaint number has resulted in that phone number being misused, wasting valuable resources on issues not at all related to accessibility. While operators remain sensitive to the need to assist customers who are blind or visually impaired, no rules are warranted.²²

IV. THE COMMISSION SHOULD NOT MANDATE THE USE OF A PARTICULAR TAG FOR VIDEO DESCRIPTION.

The *Further Notice* asks whether the Commission should require that the video description stream include a particular “tag.”²³ As we previously explained to the Commission, a requirement that broadcasters transmit video description only in a separate dedicated “VI” audio stream could negatively impact cable customers.²⁴ The VPAAC identified concerns about the impact on legacy equipment – including the millions of cable-supplied set-top boxes in

²¹ *Further Notice* ¶ 86.

²² NCTA Comments at 15 (internal citations omitted).

²³ *Further Notice* ¶ 85. As the Commission explains, a “‘tag’ refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.” *Id.* ¶ 85, n.355.

²⁴ *See* NCTA Comments at 11-12.

customers' homes today – of any new method for signaling video description.²⁵ We explained that

Digital cable set-top boxes for years have relied on the ISO-639 descriptor to identify a second audio stream. Broadcasters, however, use a different method for labeling the presence of a second audio stream (AC-3 descriptor) that can be received by television receivers in over-the-air viewers' homes. Due to these differences, cable operators and broadcasters have coordinated to ensure that any broadcaster-provided video description is appropriately labeled with not only the AC-3 descriptor for television sets but also the ISO-639 audio descriptor used by cable set-top boxes.²⁶

The situation has not changed in the last six months and the *Further Notice* does not demonstrate a need for the Commission to suddenly change its approach. The Commission has been aware of the two different methods of identifying video described programming and yet “decline[d] to dictate the method of identifying video described programming” when it reinstated its video description rules.²⁷ There is no reason to revisit that decision in the instant proceeding and risk unintended consequences for legacy equipment.

²⁵ See *Second Report of the Video Programming Accessibility Advisory Committee (“VPAAC”) on the Twenty-First Century Communications & Video Accessibility Act of 2010, Video Description* at 21 (Apr. 9, 2012), available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

²⁶ NCTA Comments at 11-12 (internal citations omitted).

²⁷ *In re Video Description: Implementation of the Twenty-First Century Communications And Video Accessibility Act of 2010*, Report & Order, 26 FCC Rcd 11847 ¶ 21 (2011) (“In line with our preference to hew closely to the video description rules as originally adopted, and given the likelihood of technological shifts in this area, we decline to dictate the method of identifying video described programming at this time.”) (internal citations omitted).

CONCLUSION

For the foregoing reasons, the Commission should provide sufficient time for cable operators to pass through, on a going forward basis, a second audio stream to operator-provided apps running on consumer-owned devices. In addition, the Commission should reject proposals to adopt new customer service requirements or to mandate use of a particular tag for video description.

Respectfully submitted,

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