

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accessible Emergency Information, and)	MB Docket No. 12-107
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)	MB Docket No. 11-43
Twenty-First Century Communications and)	
Video Accessibility Act of 2010)	

COMMENTS



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The American Cable Association (“ACA”) submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned docket.¹ The FNPRM sought comment on several issues related to implementation of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) emergency information and video description rules, including the potential requirement for multichannel video programming distributors (“MVPDs”) to provide support services specifically designed to assist customers in accessing video description or emergency information content on a secondary audio stream.² ACA submits that the CVAA provides no direction for the Commission to impose such a requirement; there is no evidence such a requirement is necessary; and that it would be exceedingly burdensome for small operators to commit the necessary resources for such dedicated customer support. Rather than adopt these additional requirements, the Commission should acknowledge that its current position of encouraging covered entities to provide customer service support remains an appropriately flexible and sufficient manner in which to address this issue.

I. CUSTOMER SERVICE REQUIREMENTS CONCERNING VIDEO DESCRIPTION AND EMERGENCY INFORMATION ARE UNWARRANTED

A. The CVAA Does Not Instruct the Commission to Impose Customer Service Requirements for Provision Of Video Description and Emergency Information.

Section 202 of the CVAA directs the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners to convey emergency information in a manner accessible to individuals who are blind or visually impaired; Section 203

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; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107, 11-43, Report and Order And Further Notice Of Proposed Rulemaking, 28 FCC Rcd 4871, ¶ 1 (2013) (“R&O” or “FNPRM”).

² FNPRM, ¶ 86.

relates to the requirement to ensure accessibility features of certain apparatus.³ The FNPRM seeks comment on whether, to carry out these mandates, the Commission should require entities subject to the requirements of Sections 202 and 203 to “provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.”⁴ The answer is no.

Requiring MVPDs to provide such support would exceed Congress’ direction to the Commission under the CVAA. The FNPRM cites no portion of the CVAA expressly instructing the Commission to adopt customer service mandates for entities subject to the video description and emergency information rules thereby implicitly acknowledging that no such authority exists. Where Congress intends for the Commission, or another entity, to adopt customer service measures to correct market failures, it explicitly says so. For example, Section 632 of the Communications Act empowers franchising authorities to “establish and enforce” customer service requirements related to cable operators and directs the Commission to establish standards by which cable operators may fulfill enumerated customer service requirements.⁵ The CVAA lacks any analogous direction to the Commission to promulgate customer service support requirements for entities subject to the video description and accessible emergency information rules. Similarly, the FNPRM does not point to any statutory ambiguity concerning customer service support for these services for the Commission to interpret. There is simply no indication that Congress intended that the Commission adopt customer service requirements for the provision of accessible emergency information or video description.

³ Twenty-First Century Communications and Video Accessibility Act, Pub. L. 111–260, Oct. 8, 2010, 124 Stat. 2775, §§ 202-203 (“CVAA”).

⁴ FNPRM, ¶ 86.

⁵ See 47 U.S.C. §§ 552(a)-(b).

B. There is No Evidence that Prescribing Dedicated Video Description or Emergency Information Customer Support is Necessary.

Although the FNPRM explores various ways in which the Commission could require covered entities to provide customer assistance for accessing audible emergency information and video description, it cites no evidence of an existing problem that such requirements would address.⁶ In fact, in this proceeding's initial Notice of Proposed Rulemaking, the Commission sought comment on this same issue – whether customer service rules were necessary – and, by the Commission's own account, the responses received lacked “detailed comment.”⁷ It is telling that there has been no record evidence of a problem given the fact that the video description rules were adopted nearly two years ago and a full comment and reply round occurred approximately six months after the effective date of the rules.⁸ One reason for the sparse record may be that customers of MVPDs have not needed support from MVPDs to access these features; another reason may be that MVPDs are already satisfying the needs of their customers who request support accessing these services.⁹ Whatever the reason, without evidence that consumers need dedicated customer service support to access video description or emergency information, there is no record evidence to support the Commission moving forward with new prescriptive obligations.

⁶ See FNPRM, ¶ 86.

⁷ R&O, ¶ 54.

⁸ See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847 ¶ 2 (2011) (video description rules effective July 1, 2012); *Media Bureau Announces Comment and Reply Comment Deadlines for the Notice of Proposed Rulemaking Regarding Accessible Emergency Information and Apparatus Requirements for Emergency Information And Video Description*, MB Docket No. 12-107, Public Notice, 27 FCC Rcd 14870 (MB, 2012) (NPRM comments due by Dec. 18, 2012); *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, Order, 27 FCC Rcd 15253 (MB, 2013) (extending NPRM reply comment due date until Jan. 7, 2013).

⁹ See Comments of NCTA at 14-15 (filed Dec. 18, 2012) (“NCTA Comments”) (explaining that the customer support rules are unnecessary because cable operators have “have established procedures for addressing video description and other concerns”); Comments of AT&T at 8 (filed Dec. 18, 2012) (“AT&T Comments”) (describing how covered entities have competitive incentives to support their customers).

C. Smaller MVPDs Would Likely Find Any Prescriptive Customer Support Mandates Burdensome.

Not only are these customer service mandates unnecessary, but they would likely be burdensome, particularly on smaller MVPDs. ACA's membership, for one, primarily consists of smaller and mid-size operators of varying sizes and capabilities; it would likely be very challenging for these operators to meet the same obligations as the country's largest cable operators.¹⁰

MVPDs in today's competitive marketplace generally know best how to support their customers and gauge their demand for support services. Different MVPDs support their subscribers in different ways depending on a variety of factors, including their company's size. For instance, a very large cable operator might excel in providing customer support through a variety of mediums, including over the Internet, whereas a very small cable operator might excel in providing impromptu after- hours service calls to their customers' premises. The Commission should not adopt prescriptive customer support mandates, such as a dedicated phone number or an accessible chat feature, because they might not match the best means by which an individual MVPD provides support to their customers.¹¹ While some of these solutions may seem appropriate and relatively costless for some operators, they could impose a substantial burden for others.¹² In light of the fact that operators know that they must be responsive to their subscribers' customer support needs, including requests for help with accessibility features, it is unnecessary and potentially substantially burdensome to demand that they dedicate specific resources for accessibility support. The thin margins that many smaller operators operate within

¹⁰ Out of ACA's approximately 850 member companies, 82% serve 5,000 or fewer subscribers, 64% serve 2,000 or fewer subscribers, and 28% serve 500 or fewer subscribers. The low subscriber numbers for many of these operators result in diseconomies of scale relative to larger operators and thin profit margins. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report and Order, FCC 13-99 ¶¶ 69-70 (rel. July 22, 2013) ("15th Video Report").

¹¹ See FNPRM, ¶ 86.

¹² Depending on how a support mandate is implemented, a dedicated phone number or chat feature, could require committing staff resources that would likely be unavailable to a small operator.

means that many do not have extra resources to specifically devote for this type of support, especially absent any indication of need for such dedicated support.¹³ As such, consistent with previous comments in this proceeding, operators should retain flexibility in responding to their customer needs.¹⁴

The Commission should also remain cognizant of the compound effect of regulatory mandates that disproportionately affect smaller MVPDs and avoid imposing unnecessary support requirements. Numerous regulatory obligations already burden smaller cable operators, including recent requirements to purchase and install equipment to comply with Emergency Alert Service requirements.¹⁵ Imposing an additional requirement would impose particular stress on these smaller operators who may not be able to withstand yet another unfunded mandate.¹⁶

¹³ See 15th Video Report, ¶¶ 69-70, 78 (noting that small cable operators lack scale economies, and cable system closures in small and rural communities).

¹⁴ See AT&T Comments at 8; NCTA Comments at 14-15.

¹⁵ See *Review of the Emergency Alert System*, etc., EB Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642 ¶ 150 (2012) (describing specific compliance challenges faced by small operators).

¹⁶ See 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”), <http://www.multichannel.com/distribution/sink-or-swim/141553> (subscription required).

II. CONCLUSION

The Commission's current approach of encouraging MVPDs to remain generally capable of answering questions regarding access to the secondary audio stream with respect to the navigation devices each supports, and to provide contact information regarding accessibility questions, is entirely sufficient and appropriate. As explained above, any further prescription of support requirements is unwarranted, unnecessary, and exceedingly burdensome, particularly for smaller MVPDs.

Respectfully submitted,

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