

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054**

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	)	

**REPLY COMMENTS OF ENTERTAINMENT SOFTWARE ASSOCIATION**

The Entertainment Software Association (“ESA”) submits these reply comments in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”) released April 9, 2013 in the above-captioned proceeding and the comments filed in response thereto.<sup>1</sup>

Through the *Further Notice*, the Commission seeks to implement provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) relating to the delivery of emergency information and video description.

In implementing the CVAA’s emergency information and video description requirements, the Commission should focus on the multichannel video programming distributor (“MVPD”) services described in the CVAA and should not impose requirements on services beyond the scope of the CVAA. The CVAA does not authorize the Commission to extend video description requirements beyond traditional broadcast and MVPD services.

Likewise, the CVAA’s emergency information requirements have a limited scope and should extend only to video programming distributed for in-home use, as contemplated

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<sup>1</sup> 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013). All comments cited herein are those filed on July 23, 2013 in MB Docket No. 12-107 in response to the *Further Notice*.

under the CVAA. For these reasons, we do not support extending the emergency information and video description requirements to IP-delivered video programming or to devices that play back that programming.

## **I. VIDEO DESCRIPTION RULES SHOULD NOT EXTEND TO IP-DELIVERED VIDEO PROGRAMMING**

ESA agrees with AT&T, the Consumer Electronics Association (“CEA”), DIRECTV, and the Telecommunications Industry Association (“TIA”) that the CVAA authorized the Commission to reinstate its previous video description rules, but not to extend those rules to include IP-delivered video programming of any type.<sup>2</sup> The existing rules apply to certain “MVPD systems,”<sup>3</sup> a term understood to refer to multiple channels of video programming intended for in-home reception,<sup>4</sup> not to IP-delivered video programming.<sup>5</sup> We agree with CEA and DIRECTV that, had Congress intended to impose video description requirements for IP-delivered video programming, it would have been more explicit, as it was with respect to closed captioning.<sup>6</sup>

In any event, it would be premature to impose video description requirements on IP-delivered video programming. There are no existing technical standards for IP-delivered video description. As directed by the CVAA, the Commission has appropriately

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<sup>2</sup> See AT&T Comments at 4; DIRECTV, LLC Comments at 4-5; TIA Comments at 4-5; CEA Comments at 7-8.

<sup>3</sup> See *Further Notice*, 28 FCC Rcd at 4927, ¶ 83.

<sup>4</sup> See 47 C.F.R. §79.3(a)(2) (defining a video programming distributor as a broadcast television station, MVPD, or “other distributor of video programming for residential reception that deliver’s such programming directly to the home and is subject to the jurisdiction of the Commission”).

<sup>5</sup> See 47 U.S.C. §613(f)(2)(A) (limiting the video description requirements to “video programming . . . transmitted for display on television in digital format”); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11853, n. 43 (2011) (“Given that the rules Congress instructed us to reinstate are limited to the provision of video description on television, the reach of broadcast stations and nonbroadcast networks over the Internet is not addressed in this proceeding.”).

<sup>6</sup> See DIRECTV Comments at 4 (“CVAA specifically directed the Commission to ‘require the provision of *closed captioning* on video programming delivered using Internet protocol.’”) (quoting 47 U.S.C. §613(c)(2)(A) (emphasis added by DIRECTV)); CEA Comments at 8.

sought comment on this topic in preparation for its Section 202 report to Congress regarding the “technical and operational issues, costs, and benefits of providing video description for video programming that is delivered using Internet protocol.”<sup>7</sup>

## **II. EMERGENCY INFORMATION RULES SHOULD NOT EXTEND BEYOND VIDEO PROGRAMMING DISTRIBUTED FOR IN-HOME RECEPTION**

The CVAA imposes emergency information requirements not on the full range of video programming, but only on that programming intended for in-home reception. AT&T and CEA correctly point out that Sections 79.1 and 79.2 of the Commission’s rules define “video programming distributors” and “video programming” in a manner that clearly focuses on the in-home context.<sup>8</sup> Moreover, the Commission has acknowledged that “Congress did not explicitly extend the scope of the emergency information rules to IP-delivered video programming, as it did in requiring closed captioning of IP-delivered video programming.”<sup>9</sup> Extending emergency information requirements beyond in-home reception therefore would go beyond limits that both Congress and the Commission have set.

It also would be counterproductive to extend emergency information requirements beyond the in-home context. Most emergencies are highly localized. In fact, the Commission’s current emergency information rule recognizes that alerts and other

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<sup>7</sup> 47 U.S.C. §613(f)(3)(B).

<sup>8</sup> See AT&T Comments at 3-4; CEA Comments at 2-3. Section 79.2 imposes obligations on “video program distributors,” as defined in Section 79.1. See 47 C.F.R. §79.1(a)(1) (defining “video programming” to include “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use”); 47 C.F.R. §79.1(a)(2) (defining “video program distributor” to include any television broadcast station, MVPD, 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”); 47 C.F.R. § 79.1(a)(3) (defining “video program provider” to include a “video programming distributor and any other entity that provides video programming that is intended for distribution to residential households”).

<sup>9</sup> *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, 14734, ¶ 6 (2012).

information related to tornados, hurricanes, earthquakes, wildfires, and other emergencies are most useful when targeted to the communities directly affected.<sup>10</sup> In contrast, the vast majority of IP-delivered video programming is not primarily intended for residential use, or even for a particular geographic area. Instead, consumers often view IP-delivered programming in a variety of locations on a variety of devices, as AT&T, CEA, and TIA observe.<sup>11</sup> We therefore agree with the Commission that applying the emergency information rule “broadly to cover all IP-delivered video programming, regardless of location, may not serve a useful purpose for and may cause confusion to viewers in areas with no connection to the location of the emergency.”<sup>12</sup>

For these reasons, the Commission should not capture IP-delivered video programming or devices that receive and/or play back that programming. If, however, the Commission were to impose emergency information requirements on IP-delivered linear video programming within the home, any responsibility on devices should be limited to a “do not block” or “do no harm” requirement. Further, to the extent any MVPD application may be subject to emergency information requirements, any deadline should be subject to industry development of appropriate technical standards, with a subsequent phase-in period of at least two years after adoption of such standard to address any complicated handoffs or other technical and business challenges.

Finally, we agree with AT&T that, to the extent the FCC adopts any customer support requirements for emergency information, at most those requirements should be modeled on the IP Closed Captioning rule, which requires that video programming

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<sup>10</sup> See 47 C.F.R. §79.2(b)(3) (“This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.”).

<sup>11</sup> See AT&T Comments at 3; CEA Comments at 4-5; TIA Comments at 4.

<sup>12</sup> *Further Notice*, 28 FCC Rcd at 4878, n. 28.

distributors provide a public point of contact for any issues.<sup>13</sup> This is the most appropriate model as viewers already have a direct relationship with their MVPDs.<sup>14</sup>

Respectfully submitted,

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August 22, 2013

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<sup>13</sup> See AT&T Comments at 5; 47 C.F.R. §79.4(c)(2)(iii) (requiring that each video programming distributor and provider “[m]ake contact information available to end users for the receipt and handling of written closed captioning complaints alleging violations of this section”).

<sup>14</sup> See *Further Notice*, 28 FCC Rcd at 4929, ¶ 86 (noting that manufacturers “may not maintain an ongoing direct-to-consumer relationship”).