PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 14-1312
Released: September 10, 2014

REMINDER REGARDING VIDEO PROGRAMMING DISTRIBUTORS' OBLIGATION TO MAKE EMERGENCY INFORMATION ACCESSIBLE TO PERSONS WHO ARE DEAF, HARD OF HEARING, BLIND, OR VISUALLY IMPAIRED

The Federal Communications Commission (FCC or Commission) issues this Public Notice to remind video programming distributors – including broadcasters, cable operators, satellite television services, and "any other distributor of video programming [for example, over fiber] for residential reception that delivers such programming directly to the home"[1] – of their obligation to make emergency information accessible to persons who are deaf, hard of hearing, blind, or visually impaired in accordance with section 79.2 of the Commission's rules.[2] Under section 79.2, emergency information encompasses critical details regarding the emergency and how to respond to the emergency.[3] This Public Notice also provides information for consumers on how to file complaints for noncompliance with this obligation.[4] Various emergencies over the past year, ranging from a West Virginia chemical spill in January, to the San Diego, California wildfires in May, to a spate of destructive tornadoes in Nebraska, Iowa, and South Dakota in June, underscore the vital nature of compliance with this rule.

We stress that the need to comply with section 79.2 is not always limited to the immediate geographic areas affected by the emergency because critical details about the emergency and how to respond – for example, relocation information – may need to reach individuals outside that immediate geographic area, and therefore fall within the rule's mandate.[5] Accordingly, compliance with section 79.2 may include providing information to areas outlying an area immediately impacted by a large-scale

---

[1] 47 C.F.R. § 79.1(a)(2) (defining "video programming distributor").

[2] *See* 47 C.F.R. § 79.2. Because of the importance of this issue, we have issued several similar Public Notices in the past. *See e.g.,* Public Notice, 16 FCC Rcd 15348 (2001); Public Notice, 17 FCC Rcd 14614 (2002); Public Notice, 18 FCC Rcd 14670 (2003); Public Notice, 19 FCC Rcd 9882 (2004); Public Notice, 20 FCC Rcd 5918 (2005); Public Notice, 20 FCC Rcd 14619 (2005) (*Hurricane Katrina PN*); Public Notice, 21 FCC Rcd 7994 (2006); Public Notice, 21 FCC Rcd 9066 (2006); Public Notice, 21 FCC Rcd 15084 (2006) (*December 2006 PN*); Public Notice, 24 FCC Rcd 11738 (2009); Public Notice, 25 FCC Rcd 7982 (2010); Public Notice, 26 FCC Rcd. 8550 (2011); Public Notice, 27 FCC Rcd 10250 (2012); Public Notice, 28 FCC Rcd 13865 (2013).

[3] *See* 47 C.F.R. § 79.2(a)(2).

[4] *See* 47 C.F.R. § 79.2(c).

[5] *See* 47 C.F.R. § 79.2 Note to paragraph (a)(2): "Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance."

disaster, such as that which occurred this past February, when a severe winter storm in the Midwest and eastern parts of the United States caused electrical outages for nearly 1 million customers across a wide region, or when Hurricane Sandy struck as many as 24 states, with particularly extensive destruction in New Jersey and New York. In the latter case, the need to comply with section 79.2 extended to areas where evacuees were temporarily re-located. In addition, we note that there are times when the airing of emergency information pertaining to a matter of national importance will also be of local concern, and therefore should be made accessible.

All video programming distributors (VPDs) that air emergency information are required to make this information accessible. There are no exemptions to section 79.2. In addition, each local broadcast licensee is responsible for complying with section 79.2 regardless of the technology used to deliver its signal to consumers.

In the case of persons who are blind or visually impaired, emergency information that is provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming must be made accessible.[6] The Commission expects that, in accordance with existing regulations, VPDs will aurally describe the emergency information in the main audio as part of their ordinary operations.[7] In addition, if the emergency information is being provided in the video portion of programming that is *not* a regularly scheduled newscast or a newscast that interrupts regular programming (*e.g.*, the programmer provides the emergency information through "crawling" or "scrolling" text during regular programming), the information must be accompanied by an aural tone.[8] This tone is intended to alert persons with vision disabilities that the VPD is providing emergency information, and those persons, therefore, should tune to another source, such as a radio, for more information. Repeating the aural tone at frequent intervals, or at least as often as the content of the crawl or scroll changes, is helpful to viewers who are reliant on these tones.

Emergency information also must be provided in a manner that is accessible to persons who are deaf or hard of hearing. Commission rules require that emergency information provided in the audio portion of the programming be made accessible using closed captioning *or* other methods of visual

---

[6] *See* 47 C.F.R. § 79.2(b)(2)(i).

[7] *See Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, 15250, ¶ 49 (2000) (adopting rules to require televised emergency information to be accessible to persons with vision disabilities).

[8] *See* 47 C.F.R. § 79.2(b)(2)(ii). The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) instructed the Commission to identify methods to convey televised emergency in a manner that is accessible to individuals who are blind or visually impaired. Pub. L. No. 111-260, § 202(a), 124 Stat. 2751 (2010); 47 U.S.C. § 613(g). In April 2013, the Commission fulfilled this mandate by issuing rules requiring the use of a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts. *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* (*Accessible Emergency Information Order*), Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013). The new rules also define the types of video programming apparatus that must be capable of delivering such emergency information in an accessible manner to these individuals. *Id.*, 28 FCC Rcd at 4913-16, ¶¶ 60-62. *See also* 47 U.S.C. § 303(u); 47 C.F.R. §§ 79.105, 79.106. The information imparted over the secondary audio channel must still follow an aural tone, which can alert consumers who are blind or visually impaired to the presence of an emergency situation, and give them an opportunity to switch to that audio stream. *Accessible Emergency Information Order*, 28 FCC Rcd at 4881, ¶ 12. Compliance with the Commission's new rules is required beginning May 26, 2015. 47 C.F.R. §§ 79.2(b)(2)(ii), 79.105(a), 79.106(a).

presentation, including open captioning, crawls or scrolls that appear on the screen.[9] Emergency information provided by these means may not block any closed captioning, and closed captioning may not block any emergency information provided by crawls, scrolls, or other visual means.[10] The "pass through" obligation, generally requiring VPDs to ensure that viewers receive closed captions intact under section 79.1, also applies to emergency information encompassed by section 79.2.[11]

Distributors that are not permitted by Commission rules to count captions created using the electronic newsroom technique (ENT)[12] are required to provide closed captions on all new non-exempt programming, including breaking news and emergency alerts.[13] We recognize that emergency information is the type of information that is typically not available in advance, and that it may be difficult for some stations to obtain closed captioning services on short notice. Nevertheless, we emphasize that during the period in which a station may be making arrangements to obtain closed captioning services, section 79.2 requires emergency information provided by that station to be made accessible by some other visual presentation method, in a manner that ensures the same access to emergency information for persons who are deaf or hard of hearing as for any other viewer.[14]

Similarly, entities that are permitted to and are using captions created with ENT for their live programming (for determining compliance with section 79.1)[15] are reminded that if the ENT method does not automatically caption non-scripted news, the provider must either caption or make the emergency information accessible by some other form of visual presentation as required by section 79.2.[16] Lastly, a distributor in a market that is permitted to use ENT, but chooses to use real-time captions rather than ENT for its live programming, must provide closed captions on emergency information contained in that programming.

---

[9] *See* 47 C.F.R. § 79.2(b)(1); *December 2006 PN,* 21 FCC Rcd at 15086.

[10] *See* 47 C.F.R. § 79.2(b)(4).

[11] *See* 47 C.F.R. § 79.1(c). All video programming distributors are required to pass through any captions that they receive from the originating source and are responsible for maintaining their equipment in working order to ensure the accurate transmission of the closed captions. *See Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Accessibility of Emergency Programming*, Second Report and Order, 15 FCC Rcd 6615, 6622, ¶ 13, n.48 (2000) (*2000 Order*).

[12] *See* 47 C.F.R. § 79.1(e)(3). The relevant text of that subsection reads: "Live programming or repeats of programming originally transmitted live that are captioned using the so-called 'electronic newsroom technique' will be considered captioned, except that effective January 1, 2000, and thereafter, the major national broadcast television networks (*i.e.*, ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 television markets as defined by Nielsen's Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all homes subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules."

[13] *See December 2006 PN,* 21 FCC Rcd at 15084. The Commission's rules permit the use of "[o]pen captioning or subtitles in the language of the target audience" in lieu of closed captioning. 47 C.F.R. § 79.1(e)(2). *See also Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014) (*Closed Captioning Quality Order*) (adopting captioning quality standards – accuracy, synchronicity, program completeness, and placement – and technical compliance rules to ensure that video programming is fully accessible to individuals who are deaf or hard of hearing).

[14] *See* 47 C.F.R. § 79.2(b)(1).

[15] *See* 47 C.F.R. § 79.1(e)(3).

[16] *See 2000 Order,* 15 FCC Rcd at 6623-24, ¶ 16.

Consumer Complaints and Enforcement

The Commission will continue to monitor closely complaints alleging violations of section 79.2, and will review for possible enforcement action.

If you are a consumer who has a complaint regarding the lack of emergency information being presented in an accessible format, you may contact the VPD directly for quick resolution of the problem, or you may file a complaint with the FCC. If you do not have contact information for the VPD, you can locate VPD contact information by searching the VPD Registry located on the FCC's webpage at http://esupport.fcc.gov/vpd-search/search.action.

If you decide to complain directly to the FCC, your complaint should include:

- The name of the VPD (*e.g.,* broadcast station, cable company, satellite TV provider, local telephone company), TV station call sign (*e.g.*, WZUE), TV channel number, and location (city and state), against whom the complaint is alleged;
- The date and time of the transmission of emergency information that was in a format not accessible to persons with disabilities; and
- The type of emergency.

You can file your complaint with the FCC using the on-line complaint Form 2000C found at http://www.fcc.gov/cgb/form2000c.html. You also may contact the FCC by letter, facsimile transmission, telephone (voice/videophone/TRS/TTY), e-mail, or any other method that would best accommodate your disability:

Federal Communications Commission
Consumer and Governmental Affairs Bureau
445 12th Street, SW
Washington, DC 20554
Phone: 1-888-225-5322 (voice); 1-844-432-2275 (videophone); 1-888-835-5322 (TTY)
E-mail: fccinfo@fcc.gov
Fax: 866-418-0232

Fact sheets summarizing the closed captioning and access to emergency information rules are available at the FCC's Web site at http://www.fcc.gov/guides/closed-captioning, and http://www.fcc.gov/guides/emergency-video-programming-accessibility-persons-hearing-and-visual-disabilities.

To request this Public Notice or any other materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This Public Notice can be downloaded in Word and Portable Document Formats (PDF) at http://transition.fcc.gov/cgb/dro/emergency_access.html.

Consumer and Governmental Affairs Bureau Contact: Suzy Rosen Singleton, 202-510-9446 (voice/videophone), e-mail Suzanne.Singleton@fcc.gov.

-FCC-