

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Accessible Emergency Information, and)
Apparatus Requirements for Emergency) MB Docket No. 12-107
Information and Video Description:)
Implementation of the Twenty-First Century)
Communications and Video Accessibility Act)
of 2010)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

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BROADCASTERS**

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EXECUTIVE SUMMARY

As America's "First Informers" during emergencies, broadcasters support the Twenty-First Century Communications and Video Accessibility Act of 2010's (CVAA) goal of facilitating access to emergency information by individuals who are blind or vision impaired. Less than two months ago, the tragedy of Hurricane Sandy yet again demonstrated the importance of this "First Informer" role, as local broadcasters placed themselves in harm's way to keep millions of people safe and informed. There is no question that all members of the viewing public should have access to such important and urgent information. NAB and its members have been active participants in the Video Programming Accessibility Advisory Committee (VPAAC), including its discussions on accessibility of emergency information, and urge the Commission to implement the CVAA in a manner generally consistent with the VPAAC's recommendations.

NAB agrees that using a secondary audio stream to provide aural emergency information that is conveyed visually during programming other than newscasts – *i.e.*, in on-screen "crawls" – is the best approach to meet the goals of the CVAA and broadcasters' operations. To serve all viewers most effectively, the Commission should focus on increasing the accessibility of local and critically urgent information. It is also important to balance the competing uses of stations' secondary audio channels, including for video description and foreign language audio.

Implementation of the secondary audio approach raises multiple technical and operational challenges. In addressing standards for the conveyance of emergency crawls, the Commission should encourage video providers to follow the best practices recommended by the VPAAC. The Commission must recognize the need for some flexibility for video providers in their provision of accessible emergency crawls. For example, verbatim audio requirements of emergency visual messages is not necessary so long as the aural information is substantially the same as in the crawl. Visual but non-textual emergency information, such as a map or other graphic displayed by a local broadcaster in the emergency crawls, should not be required to be aurally described. In addition, the rules should permit, but not require, the use of text-to-speech (TTS) to perform the translation of written emergency crawls to aural form. TTS may not be the best method to convey emergency information in all circumstances, and the rules should provide flexibility to allow for alternative means that may be developed by the telecommunications ecosystem in the future.

To be effective, the emergency information accessibility rules must coexist seamlessly with the video description rules. For example, the Commission should eliminate the video description rule that prohibits emergency information from blocking video description. In addition, the new rules should ensure that, on MVPD systems, broadcasters' aural emergency messages are not overridden by aural messages based on an MVPD's crawl.

The Commission should phase in the new rules to afford broadcasters and others sufficient time to develop and deploy the necessary technology. As the Commission has noted (and broadcasters' experience implementing the video description rules has shown), developing the capacity to offer a secondary audio stream is both costly and complex. As a result many broadcasters are not, and will not be, technically capable of implementing the proposed emergency information requirement, at least in the near term. A technical capability exception should be included in the rules like that adopted in the *2011 Video Description Order*.

In addition, the hardware and software necessary to aurally transcribe emergency crawls throughout the broadcast plant has not yet been specified, developed, or manufactured and once it is, will take some time for stations to obtain, deploy and test the equipment. And, every station must also develop the internal workflow needed to create and deliver aural transcriptions of the covered emergency crawls. Television broadcasters look forward to engaging with all stakeholders to work through these complex technical challenges to improve the accessibility of emergency information.

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The National Association of Broadcasters (NAB)¹ hereby responds to the above-referenced *Notice of Proposed Rulemaking (NPRM)*² regarding implementation of the “Twenty-First Century Communications and Video Accessibility Act of 2010” (the CVAA) provisions governing accessibility of emergency information.³ In these comments, NAB focuses on issues raised in Section 202 of the CVAA, which added a new Section

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² *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, Notice of Proposed Rulemaking, FCC 12-142 (rel. Nov. 19, 2012) (*NPRM*).

³ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of Title 47 of the United States Code). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010, to make technical corrections to the CVAA and the CVAA’s amendments to the Communications Act of 1934.

713(g) to the Communications Act of 1934, as amended (the Act). Section 713(g) requires the Commission to promulgate by April 9, 2013 regulations to make televised emergency information⁴ more accessible to people who are blind or visually impaired.⁵

I. INTRODUCTION

As America's "First Informers" during emergencies, broadcasters support the CVAA's goal of facilitating access to emergency information by individuals who are blind or vision impaired. Just two months ago, Hurricane Sandy yet again demonstrated the importance of this role, as local broadcasters placed themselves in harm's way to keep millions of people safe and informed regarding Sandy's projected path and ensuing damage.⁶ In fulfilling their "First Informer" responsibilities during emergencies such as Hurricane Sandy, television broadcasters exercise their news and editorial judgment by overlaying onto programming on an as-needed basis scrolled information on-screen via "crawls." While not every crawl contains urgent information directly pertaining to life, health, safety, or property, those that do should be accessible to all members of the viewing public, as Congress contemplated in the CVAA.

As broadcasters demonstrated in other CVAA implementation proceedings and through their key roles on the Video Programming Accessibility Advisory Committee

⁴ "Emergency information" is defined in 47 C.F.R. §79.2.

⁵ See 47 U.S.C. § 613(g); *NPRM* at ¶ 3. In addition, Section 203 of the CVAA amended Section 303 of the Act, 47 U.S.C. § 303, to ensure that television apparatus are able to make emergency information accessible to individuals who are blind or visually impaired and to make available video description. The *NPRM* also addresses these apparatus issues, and the Commission must issue the required apparatus regulations by October 9, 2013.

⁶ See, e.g., *Statement of NAB President and CEO Gordon Smith on Broadcast Coverage of Hurricane Sandy*, NAB News Release (Oct. 29, 2012), available at <http://www.nab.org/documents/newsRoom/pressRelease.asp?id=2828>.

(VPAAC),⁷ local broadcasters strongly support the efforts of Congress and the Commission to increase accessibility of video content in general. In the instant proceeding, broadcasters' desire to ensure accessibility of their programming is combined with broadcasters' strong incentive to make the critical emergency information they share available to all Americans. Reflecting these priorities, NAB and its members have been active participants in the VPAAC's examination of emergency information accessibility and have worked strenuously to help develop the recommendations that are the subject of the *NPRM*. Indeed, with very limited exceptions, the recommendations contained in VPAAC's report on emergency information accessibility should be incorporated into the Commission's rules.

Consistent with the VPAAC's recommendations, the Commission proposes to implement the relevant CVAA provisions by requiring broadcasters and other video programming providers to use a secondary audio stream to provide such televised emergency information aurally. To best ensure that broadcasters can continue doing what they do best – providing the most information to the widest audience – the new

⁷ See Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, available at <http://vpaac.wikispaces.com> (*VPAAC Second Report*). The part of the *VPAAC Second Report* that addresses access to emergency information is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Access+to+Emergency+Information+REPORT+AS+SUBMITTED+4-9-2012.pdf> (*VPAAC Second Report: Access to Emergency Information*). The part of the *VPAAC Second Report* that addresses video description is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf> (*VPAAC Second Report: Video Description*). Indeed, the *NPRM* bases its recommendation in large part upon the *VPAAC Second Report*, as required by statute. See, e.g., *NPRM* at ¶ 7; see also S. REP. No. 111-386, at 10 (“[T]he Commission shall adopt the recommendations contained in the [VPAAC] reports if the Commission finds that the reports' recommendations adequately meet the [CVAA's] objectives.”).

rules should maintain some flexibility for operators while focusing on increasing the accessibility of local and critically urgent emergency information. The rules should not dictate the precise wording or content of the aurally transmitted information, and should continue to permit broadcasters to exercise their editorial discretion as to the appropriate level of public alerting for state and local emergency information.

As with adoption of video description rules in 2011⁸ and of Internet protocol (IP) closed captioning rules earlier in 2012,⁹ implementation of the CVAA's emergency information provisions in today's digital world necessarily will have many moving parts and will require significant technical coordination among broadcasters, non-broadcast programmers, multichannel video programming distributors (MVPDs), and manufacturers. But, for broadcasters the instant proceeding is unique in CVAA implementation. It contemplates creating both software and hardware that has yet to be specified, designed, developed, manufactured, brought to market, tested and implemented for the complex task of aurally transcribing crawled information that may be derived from a multitude of sources within the broadcast plant.¹⁰

In light of these challenges, the Commission should allow broadcasters to phase in compliance over a sufficient period of time and should incorporate a technical capability exception as it did for video description. Accessibility of emergency crawls is a critical issue, and the Commission should ensure that its rules lead to the best results

⁸ See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 (2011) (“2011 Video Description Order”).

⁹ See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012) (“IP Closed Captioning Order”).

¹⁰ This task is further complicated by the fact that each station may have different means of generating crawls.

for all television viewers in the long term. With limited time (only until April 9, 2013) to adopt regulations in this proceeding, the Commission should focus on the primary directives of the relevant statutory provisions and should not address other, tangential issues that can be reserved for a later date.

II. TO BETTER SERVE ALL VIEWERS, THE RULES SHOULD FOCUS ON THE AIRING OF LOCAL AND CRITICALLY URGENT EMERGENCY INFORMATION ON A SECONDARY AUDIO STREAM

NAB supports the FCC's proposal to require video programming distributors to make emergency information that is crawled subject to the new rules available on a secondary audio stream.¹¹ Under this approach, as recommended by the VPAAC, viewers on the primary channel would be alerted to the presence of emergency information through the already-required aural tones that accompany emergency information during non-newscast programming.¹² Viewers who are blind or visually impaired then would be able to access the aural representation of the televised emergency crawl by switching to the secondary audio stream.¹³ This approach is sensible from a technical and practical perspective and, as discussed in the Section III below, ensures that viewers benefit by receiving critical crawled information, either by watching on the main channel or through an audio transcription on the secondary audio stream. To better serve all viewers, we stress that the requirement to provide

¹¹ See *NPRM* at ¶ 9.

¹² See *id.* at ¶ 4 (“[I]f emergency information is provided solely visually during programming that is not a newscast (such as through an on-screen crawl), it must be accompanied by an aural tone.”); 47 C.F.R. § 79.2(b)(1)(iii).

¹³ As discussed below, some stations fill the second audio channel with the primary audio when video description service or foreign language audio are not offered. This enables blind or visually impaired viewers to leave the second audio channel as the default channel, which would make it unnecessary to switch to the second audio channel in an emergency situation.

emergency information aurally in the secondary audio stream should be applicable only to urgent information directly pertaining to life, health, safety and/or preservation of property.

Apply the Rules Only to Non-Newsicast Programming. As the *NPRM* proposes, the rules should apply only to emergency crawls conveyed during non-newsicast programming.¹⁴ Limiting these rules to crawls is appropriate because emergency information conveyed in other television broadcast settings, such as during a regularly scheduled newscast or during a newscast that interrupts regular programming, is already accessible to individuals who are blind or visually impaired through the aural presentation in the main program audio stream.¹⁵ To clarify this distinction, the language proposed in the *NPRM*¹⁶ for Section 79.2(b)(1)(iii) should be slightly revised as follows:

(iii) Emergency information that is provided visually during programming that is neither:

- (a) A regularly scheduled newscast, nor
- (b) A news presentation that interrupts regular programming

must be accompanied with an aural tone, and beginning [INSERT DATE] must be made accessible to persons with visual disabilities through the use of a secondary audio stream to provide the emergency information aurally.

¹⁴ See *id.* at ¶¶ 4, 9.

¹⁵ See *id.* at ¶ 8.

¹⁶ Compare *id.* at App. A, § 79.2(b)(1)(iii):

(iii) Emergency information that is provided visually during programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone, and beginning [INSERT DATE] must be made accessible to persons with visual disabilities through the use of a secondary audio stream to provide the emergency information aurally.

Define “Emergency Information” as Critically Urgent Information. For the foreseeable future, the Commission and all video programming distributors will need to strike an appropriate balance in the distribution of different types of information on the secondary audio stream. This is because the secondary audio stream cannot be devoted at the same time to multiple audio services which can include: (a) audio for the underlying programming (such as a mono mix of the main audio stream); (b) video description; (c) secondary language programming; and (d) emergency information such as Emergency Alert System (EAS) transmissions or text-to-speech (TTS) messages.

To ensure that video described programming is not continuously disrupted during significant weather events (such as extended snow storms or hurricanes), we urge the Commission to revise Section 79.2 of its rules to apply to critically urgent information. Not every crawl on television identifies an urgent issue directly affecting life, health, safety or property. In many cases, local broadcasters include in crawls information that is helpful, but not critical. This breadth of information is appropriate in crawls, where information can be displayed on the screen without significantly interfering with a viewer’s enjoyment of the underlying programming.

More specifically, existing Section 79.2(a)(2) should be revised to end after the phrase “civil disorders,” so that the following examples are deleted: school closings, changes in school bus schedules resulting from such conditions, and non-imminent weather conditions and alerts. These types of information, which are not of immediate urgency, should not be required to be transmitted aurally on the second audio stream, although broadcasters certainly should continue to have the flexibility and discretion to

transmit them aurally, if appropriate.¹⁷ Accordingly, the Commission should make clear that the new rules apply to “[i]nformation about emergencies that pose imminent and serious threats to life or property.”¹⁸ This approach is consistent with the VPAAC’s recommendation, which identifies as the least significant category of emergency information “[i]nformation that is lengthy, but is not of a serious nature, nor involves threats to life or property, for example, weather-related school closures or schedule changes for public events.”¹⁹

Focus on the Local Nature of Emergency Information. As local stations’ news broadcasts have reflected for decades, truly critical emergency information is inherently local. The emergency accessibility rules should recognize and reflect this focus. Individuals watching or listening to broadcast stations are most concerned about an emergency’s immediate effects on them at their location. Current Section 79.2(b)(2) of the rules recognizes this inherently local nature:

This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.²⁰

Consistent with Section 79.2(b)(2), the Commission should specify here that the emergency crawls to be aurally transcribed under the new rules will be generally limited to locally-provided (*i.e.*, licensee-provided) information. This would include, for example, local information that tells citizens in an area to avoid unnecessary travel, to

¹⁷ See *id.* at 7. The Commission’s rules will merely set the baseline of what is required – a broadcaster can always do more, if the facts of a specific situation demand it. Many local television stations also provide instant weather and emergency information on their station’s web sites.

¹⁸ VPAAC *Second Report: Access to Emergency Information* at 10.

¹⁹ *Id.* at 7.

²⁰ 47 C.F.R. § 79.2(b)(2).

seek shelter, or to evacuate. It would not include general information that a broadcast or non-broadcast programming network may be crawling nationally or reporting on a regional event, such as a general report that preparations across a large part of the country are underway as a storm approaches. If such information reaches a critical and urgent level that would directly affect local populations, broadcasters typically will break in with a newscast, thereby providing the information in a manner aurally accessible to blind and vision impaired individuals. Alternatively, if the information becomes locally-focused and is presented as a crawl, broadcasters would then provide the corresponding audio.

Because of the inherently local nature of emergency information, the definitions in Section 79.1 should continue to apply to the new emergency information rules. The Commission should not include in the emergency information rules the definitions of video programming owner (VPO) and video programming distributor (VPD) from Section 79.4(a) of the IP captioning rules.²¹ Those definitions are unnecessary and unhelpful here. For example, a VPO, such as network or a syndicator, would not have any knowledge that a licensee was crawling local emergency information over their programming at the station level. There simply appears to be no reason to change at this point the definitions the Commission has long used in its emergency information accessibility rules.

²¹ See *NPRM* at ¶ 17; see also 47 C.F.R. § 79.4(a)(3) (VPD); *id.* § (a)(4) (VPO).

III. DUE TO SIGNIFICANT TECHNICAL AND OPERATIONAL CONSTRAINTS, THE NEW RULES SHOULD PROVIDE BROADCASTERS WITH APPROPRIATE FLEXIBILITY AND DISCRETION

The Commission should recognize that implementing the technology to create the audio representation of an emergency crawl, and deploying a secondary audio stream to convey that audio, presents multiple challenges, which are more complex than those encountered in implementing video description. Accordingly, the rules must afford substantial flexibility to broadcasters in the technical and operational implementation of these new requirements.

Technical Capability Issues. As an initial matter, because an integrated solution for creating the audio representation of an emergency crawl does not currently exist, the emergency accessibility rules need to account for the challenges of operating in today's digital television environment.²² To comply with this new emergency information requirement, stations must be able to convert emergency crawl graphics into audio, route that audio through their facilities and encode that audio onto a secondary audio stream for transmission over the air. In a typical broadcast television station, the graphics for an emergency crawl may originate from varying sources around the facility. Depending on a number of circumstances regarding how the station responds to a specific emergency event, the crawl may be created in the news room, in master control, in the weather center or originate from the station's EAS equipment. While TTS technology and software is available, there is currently no methodology for interfacing the output of the graphics equipment (*i.e.*, the crawl itself) to such TTS equipment. The

²² The *NPRM* also asks generally about the effect of its proposals on broadcasters' ability to channel share. See *id.* If the Commission seeks to promote channel sharing, it should consider that goal in crafting these rules.

station then must have the technical capability to route this additional audio stream through its plant and obtain the equipment that will encode this audio for over-the-air broadcast.

Installation of a secondary audio stream alone has proven to be costly and complex. Based on NAB members' recent experience in implementing video description, the typical cost per station is approximately \$40,000 for this first step alone. At this time, many television stations are not providing a second audio stream capable of including video description or aural emergency information, and many are not technically capable of doing so.²³ In addition, since no readily available hardware or software yet exists to facilitate the creation of the aural representation of the emergency crawl, the cost to implement this capability is unknown but estimated to be approximately \$15,000 to over \$30,000. For those with complex broadcast plants, the costs could be substantially higher.²⁴

As a result many broadcasters are not, and will not be, technically capable of implementing the *NPRM's* emergency information proposal, at least in the near term.

²³ *Video Description Order*, 26 FCC Rcd at 11860, ¶ 23 (“We find the [technical capability] exception remains necessary despite the passage of time. As APTS notes, almost half of public television stations are not providing a second audio stream capable of including video description at this time, and many are incapable of doing so.”) (internal citations omitted). Outside the major network stations in the top markets, the video description rules required only stations that could provide a secondary audio stream that includes video description at “minimal cost” to begin providing video description in July 1, 2012. See *id.* at 11860, ¶ 23 n. 109.

²⁴ Due to the inherent differences in broadcast plants, different broadcasters will likely acquire aural transcription capabilities in technically different manners, which will have differing costs. For those stations that lack the technical capability required for a secondary audio stream and determine it is necessary to replace its encoder along with other related equipment, the total costs will be significant. At least one NAB member estimates these costs may run as high as \$250,000. In addition, all broadcasters will need to modify their internal workflow policy and procedures to create and deliver aural transcriptions of the covered emergency information.

The new rules therefore should incorporate a technical capability exception in its rules²⁵ like that adopted in the *2011 Video Description Order*,²⁶ so that the emergency information requirements do not apply when a station lacks the technical capability necessary to create and transmit the emergency crawl in aural form – that is, on a secondary audio stream.²⁷

Best Practices for Secondary Audio. Rather than impose any mandates at this time,²⁸ the Commission should encourage broadcasters to follow, as a best practice, VPAAC's suggestion of placing the main program audio on the secondary audio stream when video description, alternate language audio, and emergency information are not available, rather than maintaining a silent channel.²⁹

The Commission notes that this approach “would enable consumers to tune to their secondary audio stream all of the time, instead of needing to switch back and forth depending on whether video description is available for a particular program or emergency information is being provided.”³⁰ A best practices regime will preserve flexibility for broadcasters, as they work to upgrade their plants and implement these complex new requirements.

²⁵ See *NPRM* at ¶ 10.

²⁶ See *2011 Video Description Order*, 26 FCC Rcd at 11860, ¶ 23.

²⁷ As in the *2011 Video Description Order*, broadcast stations would be considered to have the technical capability necessary to support aural transcription of crawled emergency information if they have virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost. See *id.*

²⁸ See *NPRM* at ¶ 22.

²⁹ See *VPAAC Second Report: Video Description* at 26-27.

³⁰ *NPRM* at ¶ 22.

No Requirement for Verbatim Transcription of Crawls or Description of Maps or Graphics. The new rules also should afford broadcasters editorial discretion in the conveyance of aural transcription of emergency crawls and should not be overly prescriptive. For example, NAB agrees with the VPAAC observation that the rules need not require verbatim translation of crawls, so long as they provide substantially the same information, which could be in a summary form.³¹ Requiring a verbatim translation could have the unintended effect of shifting broadcasters' attention from complete and rapid dissemination of emergency information to policing the exact language in their screen crawls so as to simplify its literal translation. Requiring a verbatim translation could also lead at times to unnecessarily long aural announcements, which would "unduly interrupt []" video description.³²

Similarly, the new rules should not require visual but non-textual emergency information, such as a map or other graphic displayed by a local broadcaster as part of a crawl, to be described aurally.³³ Aural description of such graphics could be infeasible if automated TTS is used.³⁴ More generally, a requirement to aurally describe graphic emergency information—which may be infeasible or otherwise impracticable—could have unintended consequences of limiting the use of such graphic information in order to comply with the rules. Such a result would not be in the public interest. Broadcasters

³¹ See *id.* at ¶ 13; see also *VPAAC Second Report: Access to Emergency Information* at 10 ("The aural information does not need to be identical to the visual information that appears as a crawl or scroll across the TV screen, but should provide understandable and comprehensive audible content corresponding to the crawl or scroll.").

³² See *NPRM* at ¶ 13.

³³ As noted above, permitting broadcasters editorial discretion regarding the manner in which to provide emergency information, both visual and aural, will allow broadcasters to serve the informational needs of the entire viewing public.

³⁴ See *NPRM* at ¶ 13. As discussed below, TTS should be permitted but not required.

should be permitted to exercise editorial discretion to convey emergency information so that they are able to provide such information in the manner most appropriate and effective for *both* visual *and* aural presentations.

TTS Permitted, But Not Required. Consistent with the treatment of information disseminated through the EAS, the rules should permit but not require the use of automated TTS to perform the translation of written emergency information to aural form.³⁵ As the VPAAC noted, TTS can be essential to convey emergency information because of the speed with which it can generate necessary audio.³⁶ However, TTS may not be the best method to convey emergency information in all circumstances. Flexibility will allow broadcasters to convey aural emergency information in the manner most efficient and effective in the given circumstances.

Alternative Means Should Be Preserved. As the Commission notes, there may be future technologies that may be developed by video programming distributors and the manufacturers that could provide new methods for achieving accessibility for emergency information.³⁷ Indeed, footnote 65 of the *NPRM* notes some of the potential benefits which may emerge:

[I]f textual data is also transmitted as a separate file within the broadcast stream, it can also be made available for other assistive technologies and language translation systems that have the potential to enhance access to emergency information both for consumers with and without visual impairments.... Further, by permitting the text to be converted to speech in the apparatus, it could be possible for an apparatus to translate emergency information to a language other than English, or to provide

³⁵ See *id.* at ¶ 12 (citing *Review of the Emergency Alert System*, Order on Reconsideration, 27 FCC Rcd 4429, 4432 ¶¶ 7-8 (2012)).

³⁶ *VPAAC Second Report: Access to Emergency Information* at 9.

³⁷ See *NPRM* at ¶ 37.

emergency information when the viewer is using that apparatus for something other than watching covered video programming.³⁸

Transmission of textual data as a separate file within the broadcast stream would not, however, at this time result in the potential benefits described in the *NPRM*. At present, it is not feasible for broadcasters to create, encode and deliver such a file in a format with the flexibility (*e.g.*, with the ability to change crawl sizes and fonts) which footnote 65 appears to envision. Additionally, the tens of millions of DTV receivers currently in the market cannot decode such files and no third party devices exist that consumers could use to render and display these files. While certain potential benefits may be unattainable in the present, the Commission should allow television broadcasters, MVPD providers and device manufacturers the flexibility to explore using emerging technologies or other methods as an alternate means of making emergency information accessible to the widest possible audiences.

Interaction with Video Description Rules. The emergency crawl information accessibility rules must be designed to coexist seamlessly with the video description rules.³⁹ Assuming the new rules require that the same secondary audio stream used for video description also be used to transmit emergency information, a balance will be required to ensure the broadcast of adequate emergency information without unduly interrupting video description.⁴⁰ As recommended by the VPAAC, the Commission

³⁸ *NPRM* at ¶ 12 n. 65.

³⁹ *See id.* at ¶ 14.

⁴⁰ *See id.* at ¶ 13.

should modify the video description rules to eliminate the prohibition on emergency information blocking video description.⁴¹

Ensure Broadcast and MVPD Systems Work Together. Finally, the rules should ensure that broadcasters' aural emergency messages are not overridden by aural messages based on an MVPD's crawl. The local nature of the emergency information provided by broadcasters is of most immediate concern to their local audiences, and this emergency information should not be distorted or deleted by more general MVPDs' messages. Without such rules, consumers may not receive the aural emergency information even though the information is sent by broadcasters.⁴² Establishing "rules of the road" in this area is the best way to ensure that broadcasters and MVPD work together so that all consumers, including those who are blind or visually impaired, can receive the emergency messages that are broadcast.⁴³

⁴¹ See *VPAAC Second Report: Access to Emergency Information* at 10-11. In addition, the Commission should state explicitly that a video-described program intended to count toward a broadcaster's quarterly requirement will still count, even if it is interrupted by an aural conveyance of emergency information that appears in an on-screen crawl. This is consistent with the *2011 Video Description Order*, which includes a breaking news exemption. See *2011 Video Description Order*, 26 FCC Rcd at 11870, ¶ 47 ("In practice, this would mean that if an unscheduled news bulletin interrupted an hour-long video described program, the station or system would still be allowed to count that program in its entirety toward the 50 hour quarterly requirement."). See also *id.* n.189.

⁴² Such "rules of the road" would also save Commission resources. Specifically, the Commission would receive far fewer complaints if it ensures that MVPDs' and broadcasters' systems work together to ensure that emergency messages are not overridden. Such complaints, which would likely be made against the broadcaster, would require the Commission to investigate to eventually determine that the broadcaster properly sent the emergency information.

⁴³ Moreover, a broadcast license should not be a subject for non-compliance of the Commission's rules if its emergency information, either via crawl or EAS, is interrupted or overridden by an MVPD carrier and that information is not aurally transcribed to the viewer.

IV. THIS PROCEEDING SHOULD FOCUS ONLY ON ISSUES MANDATED BY THE CVAA

This proceeding should focus on implementing new emergency information rules as required by statute, rather than the several additional issues raised in paragraphs 24 through 26 of the *NPRM*. The Commission only has a limited amount of time in which to consider the record in response to this *NPRM* and adopt rules to satisfy its statutory obligations. Therefore, the Commission should focus its resources on the main goal of this proceeding—ensuring that emergency information is made accessible to individuals who are blind or visually impaired in a timely, yet reasonable, period—and defer consideration of any tangential issues.

For example, the Commission should consider in future separate proceeding issues regarding the identification of audio streams tagged as VI (visually impaired).⁴⁴ NAB is unaware of any DTV receiver currently available that can recognize and allow a consumer to choose an audio stream tagged as VI (visually impaired) according to the ATSC DTV standard (A/53 Part 3: 2000).⁴⁵ Thus, even if a broadcaster were to transmit emergency information on a third audio stream announced consistent with the current standard, it is highly unlikely that a consumer would be able to locate the stream on his or her TV receiver, resulting in preventable consumer confusion.

Similarly, questions regarding the delivery of multiple simultaneous ancillary audio services can be addressed at a future time.⁴⁶ As recognized just last year in the *2011 Video Description Order*, equipment limitations may keep some viewers from

⁴⁴ See *NPRM* at ¶ 24.

⁴⁵ See *id.*

⁴⁶ See *NPRM* at ¶ 26.

being able to access a third audio channel even if one were to be provided by a video programming distributor.⁴⁷ The Commission should not expand this proceeding well beyond the obligations the statute mandates to address this broad and complicated issue in light of the short statutory deadlines.⁴⁸ Nor should the Commission act on the proposal of Dolby Laboratories, Inc. (“Dolby”) in this proceeding.⁴⁹ As the *NPRM* notes, the additional bandwidth required to provide two full surround channels “could pose a hardship” for many broadcasters and MVPDs, and the statutory deadline in this proceeding does not provide sufficient time for consideration of these additional technical and operational challenges.⁵⁰

V. A SUFFICIENT PHASE-IN PERIOD IS NEEDED TO IMPLEMENT THE NEW RULES EFFECTIVELY

As the Commission has found in other CVAA rulemakings, implementing the required accessibility functionality raises significant technical and operational challenges

⁴⁷ Due to the limitations of MVPDs as well as legacy analog television receivers, many consumers are limited to only two audio program channels. See *2011 Video Description Order*, 26 FCC Rcd at 11863, ¶ 31 (“[T]he potential for conflicting uses that originally drove adoption of the [program-related content] exception in the virtually all-analog world in 2000 remains today....”).

⁴⁸ The Commission’s concern that “equipment limitations may be discouraging video programming distributors from ... voluntarily” carrying more than one additional audio channel underestimates the complexities of the program delivery ecosystem. *NPRM* at ¶ 26. Distribution of more than one additional audio channel is a complex and multifaceted issue and therefore is particularly inappropriate to address here.

⁴⁹ See *id.* at ¶ 25.

⁵⁰ *Id.* Further, as the Commission noted in the *2011 Video Description Order*, the Commission’s rules prohibit it from preemptively incorporating changes to a third party standard, which would appear to be required to adopt Dolby’s “receiver-mix” proposal. See *2011 Video Description Order*, 26 FCC Rcd at 11872, ¶ 52 n. 208 (citing 1 C.F.R. § 51.1(f)).

that will require a ramp-up period.⁵¹ Accordingly, the Commission should adopt a phased-in approach to allow industry to implement the new rules in a reasonable manner.⁵² Here, the Commission's chosen method for implementing the CVAA requires the specification, development, manufacturing, acquisition, testing and deployment of entirely new hardware and software in the broadcast plant. By conservative estimates, and in preliminary discussions with manufacturers, broadcasters estimate it will take at least 18-24 months to bring a product to market.

After the hardware and software become available, stations then will need an additional 12-18 months to purchase, test, integrate and deploy the new technology. Finally, there are major challenges for broadcasters to design and implement a workflow – which currently does not exist for any U.S. broadcaster – for the aural emergency information contemplated in this proceeding.

Based on these significant technological and operational challenges and the time required to address them, the Commission should afford broadcasters in the top 25 markets that have a secondary audio stream 36 months from Federal Register publication of the adopted rules to come into compliance.⁵³ Broadcasters in the top 25

⁵¹ See, e.g., *IP Closed Captioning Order*, 27 FCC Rcd at 809, ¶ 34, 821, ¶ 53, & 859, ¶ 122; *2011 Video Description Order*, 26 FCC Rcd at 11865, ¶ 37; *Implementation of Sections 716 and 717 of the Communications Act of 1934*, 26 FCC Rcd 14557, 14601-05, ¶¶ 105-13 (2011).

⁵² Moreover, applying these requirements to Mobile DTV would be premature. Mobile DTV is a nascent service that should be afforded flexibility, and the CVAA contemplates that Mobile DTV not be required to meet certain requirements (e.g., video description) until a later date. See, e.g., CVAA § 204(d); see also *2011 Video Description Order*, 26 FCC Rcd at 11875, ¶ 57.

⁵³ These time frames are based on the anticipated marketplace availability of audio transcription hardware and software. NAB urges the Commission to engage in a periodic review as this new technology is developed to ensure that all regulated entities will be able to meet the applicable imposed deadlines.

markets that currently lack a secondary audio stream will require sufficient time to make the necessary upgrades to their equipment, as will broadcasters in smaller markets (*i.e.*, markets below the top 25) with more limited resources. The Commission should provide these broadcasters (top-25 market broadcasters without a secondary audio stream, and broadcasters in markets below the top 25) 42 months from Federal Register publication of the rules to come into compliance.⁵⁴ Broadcasters will work aggressively to meet or exceed these deadlines as technology becomes available.

VI. CONCLUSION

As America's "First Informers" during emergencies, NAB's member broadcasters strongly support the CVAA's goal of facilitating access to emergency information by individuals who are blind or vision impaired. The rules should incorporate the VPAAC's important work and permit and encourage broadcasters to continue to do what they do best – provide emergency information to *all* of the American public.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

A handwritten signature in black ink, appearing to read "Jane E. Mago". The signature is stylized and written over the printed name.

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⁵⁴ The Commission should delegate to the Media Bureau authority to grant additional six months to one-year extensions to any broadcasters outside the top 25 markets that are not capable of implementing the secondary audio stream or creating the workflow for rendering aural transcription of the emergency information by the end of the ramp-up period.