

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)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits this reply to certain comments filed in the above-captioned proceeding.² As NAB has explained,³ television broadcasters support the goal of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)⁴ regulations to make televised emergency information⁵ more accessible to people who are blind or visually impaired.⁶

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 See Comments of NAB, MB Docket No. 12-107, Dec. 18, 2012 at 2-3 (“NAB Comments”).

⁴ 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.

In these replies, NAB focuses on four issues raised in the initial comments: (1) applicability of audio transcription requirements for televised video programming; (2) timing for implementation of accessible emergency information; (3) the statutory directive to focus on the needs of the blind and visually impaired; and (4) technical issues that can be resolved in the marketplace. These points are discussed below.

I. THE COMMISSION CORRECTLY RECOGNIZED THAT ITS LIMITED AUTHORITY AND INHERENT TECHNOLOGICAL CHALLENGES PRECLUDE REGULATING EMERGENCY INFORMATION FOR IP-DELIVERED VIDEO PROGRAMMING

The *NPRM* states that “Congress did not explicitly extend the scope of the emergency information rules to IP-delivered video programming” and that the CVAA directs the FCC to apply video description obligations only “insofar as such programming is transmitted for display *on television* in digital format.”⁷ We agree. As the Entertainment Software Association and the Consumer Electronics Association correctly note, had Congress intended to reach emergency information on IP-delivered programs, it would have done so explicitly, as it did in the context of closed captioning.⁸

⁵ “Emergency information” is defined in 47 C.F.R. §79.2.

⁶ 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.

⁷ *NPRM* at ¶ 6 (*citing* 47 U.S.C. §§ 613(c) & 613(f)(2)(A)) (emphasis added). See also *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, 788 (¶ 1) (2012) (“IP Video Captioning Order”) (noting the differences between closed captioning “on television” and “IP-delivered video programming that was not part of a broadcaster or multichannel video programming distributor service.”).

⁸ See Comments of the Electronics Software Association, MB Docket No. 12-107, Dec. 18, 2012 at 3; Comments of Consumer Electronics Association, MB Docket No. 12-107, Dec. 18, 2012 at 5-6 (“CEA Comments”).

It is logical that Congress did not take this step. As both the Commission and the Video Programming Accessibility Advisory Committee (VPAAC) recognize, there are inherent legal, practical and technological limitations that preclude “at this time ... any uniform or consistent methodology for delivering [emergency] information via the Internet.”⁹ For example, because of various copyright restrictions, local TV stations generally do not simultaneously live-stream their broadcasts (with the exception of some daily newscasts)¹⁰ so there is no mechanism by which a local broadcaster could effectively convey timely emergency information to a consumer viewing its content on the Web.¹¹

Moreover, a viewer that accesses episodic network programming via a local television station’s website (e.g., *The Simpsons* or *The Good Wife*) would not receive any local emergency crawls (and thus no accompanying audio transcription) because they would not be viewing live or televised programming – rather, they are accessing stored pre-recorded programming that is hosted on the network’s own website. Additionally, it is very difficult to reliably determine the location of an IP content viewer. The accuracy of applications offering IP geolocation capability depends on a number of factors that may render these solutions inadequate for use in critical emergency situations.¹²

⁹ *NPRM* at ¶ 6 (quoting VPAAC Second Report; Access to Emergency Information at 9).

¹⁰ Newscasts are proposed to be exempt from the requirements proposed herein. See *NPRM* at ¶ 4.

¹¹ It would be of little benefit to require audio transcription of crawls for viewers accessing previously aired local programming on a station’s website, as it is most likely the emergency occurred in the past and the information is no longer timely or relevant to the viewer.

¹² See http://compnetworking.about.com/od/traceipaddresses/f/ip_location.htm, last visited Jan. 7, 2013. The unreliability of geolocation applications means that IP content viewers are unlikely to receive emergency information relevant to them.

Thus, contrary to the assertions of the American Council of the Blind, the Commission's analysis is not "flawed."¹³ Rather, the Commission is correct to recognize that, unlike televised programming, content accessed via IP is, more often than not, likely to be delivered on a non-live, non-local basis. The Commission was accordingly correct to exclude IP-delivered programming from any new proposed rules governing accessible emergency information.

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

As detailed in our initial comments, 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.¹⁴ In addition to this significant hurdle, outside the top 4 broadcast networks in the top 25 markets, many stations lack the technical capability of a secondary audio stream in the broadcast facility. It is simply not true that the "infrastructure ... already exists"¹⁵ for secondary audio merely because the first phase of implementing video description has commenced. Indeed, Congress itself recognized that the broadcast ecosystem would require a multiyear ramp-up requirement for secondary audio service when it established

¹³ Comments of American Council of the Blind, MB Docket No. 12-107, Dec. 18, 2012 at 1 ("ACB Comments").

¹⁴ See NAB Comments at 17-19. 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. There are also 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.

¹⁵ ACB Comments at 2.

the market based statutory deadlines for video description.¹⁶ Moreover, as both DIRECTV and DISH Network point out, absent a sufficient phase-in period, both satellite service providers could face capacity shortages on their spot beams to support secondary audio services for all television broadcast stations.¹⁷

Based on these significant technological and operational challenges and the time required to address them, we again urge the Commission to afford broadcasters in the top 25 markets that already have a secondary audio stream 36 months from Federal Register publication of the adopted rules to come into compliance.¹⁸ Broadcasters in the top 25 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.¹⁹ Broadcasters will work aggressively to meet or exceed these deadlines as technology becomes available.

¹⁶ See 47 U.S.C. § 613(f)(4).

¹⁷ See Comments of DIRECTV, LLC, MB Docket No. 12-107, Dec. 18, 2012 at 2-4; Comments of DISH Network L.L.C., MB Docket No. 12-107, Dec. 18, 2012 at 3.

¹⁸ 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.

¹⁹ 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.

III. THE RULES SHOULD FOCUS ON ACCESSIBILITY FOR INDIVIDUALS WHO ARE BLIND OR VISUALLY IMPAIRED

NAB appreciates the desire of some parties to ensure accessibility of emergency information for those who are both blind or visually impaired and deaf or hard of hearing.²⁰ In formulating new rules in this complex area, however, the Commission must be guided by the express directives of the CVAA, as well as technological constraints. The rules adopted here must focus on the task at hand – the explicit Congressional directive to ensure the accessibility of emergency information for the blind or visually impaired. Attempting in this proceeding to address additional complex issues relating to accessibility for those who are those who are deaf or hard of hearing in addition to blind or visually impaired in the tight timeframe provided would be impracticable in light of technological limitations.

As a threshold matter, accessibility for individuals with both visual and hearing impairments is not explicitly addressed in Section 202(a) of the CVAA, even though it is addressed elsewhere in the statute.²¹ If Congress had intended Section 202(a)'s implementing rules to address individuals with both visual and hearing impairments, it would have so stated,²² as it did separately in Section 105 of the CVAA, which establishes

²⁰ See Comments of National Public Radio, Inc., MB Docket No. 12-107, Dec. 18, 2012 at 2; Comments of Rehabilitation Engineering Research Center on Telecommunications Access, the American Association of the Deaf-Blind, the Association of the Deaf, and Telecommunications for the Deaf and Hard of Hearing, Inc. (collectively, "RERC-TA"), MB Docket No. 12-107, Dec. 18, 2012 at 3-6.

²¹ Section 202(a) calls on the Commission and industry to address the accessibility of emergency information specifically for "individuals who are blind or visually impaired." CVAA § 202(a); 47 U.S.C. § 613(g).

²² See *Public Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 816 (D.C. Cir. 2008) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)).

an equipment program specifically for individuals who are deaf-blind.²³ This contrast is significant. “[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”²⁴

As NAB moreover emphasized in its initial comments, the Commission has a limited amount of time in which to consider this record and adopt rules to satisfy its statutory obligations;²⁵ it should not enlarge this proceeding beyond the express statutory requirements of Section 202(a).²⁶ Instead, the Commission should focus its resources on the statutory directive at the center of this particular CVAA implementation proceeding – ensuring that emergency information is made accessible to individuals who are blind or visually impaired in a timely, yet reasonable, period. Other proposals beyond the statutory mandate, even those directed towards laudable goals, should not be considered at this time.

Importantly, proposals to address accessibility for individuals who are deaf or hard of hearing in addition to blind or vision impaired would be impractical – if not impossible –

²³ Compare CVAA § 105 (requiring the Commission to establish rules that provide relay service support for the distribution of equipment to make certain services “accessibly by low-income individuals who are *deaf-blind*”) (emphasis added) with *id.* § 202(a) (requiring, among other things, that the Commission establish rules to convey emergency information “in a manner accessible to individuals *who are blind or visually impaired*”) (emphasis added).

²⁴ *Gozlon-Peretz v. U.S.*, 498 U.S. 395, 404 (1991), citing *Russello v. U.S.*, 462 U.S. 16, 23 (1983); *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 452 (2002); *Independent Bankers Ass’n of America v. Farm Credit Admin.*, 164 F.3d 661, 667 (D.C. Cir. 1999); *U.S. v. Monzel*, 641 F.3d 528, 542 (D.C. Cir. 2011); *Village of Barrington, Illinois v. Surface Transportation Bd.*, 636 F.3d 650, 651 (D.C. Cir. 2011).

²⁵ See NAB Comments at 17.

²⁶ See CEA Comments at 2 (“As the Commission develops rules for the delivery of emergency information and video description to individuals who are blind or visually impaired, CEA urges it to adhere closely to the CVAA’s statutory language.”).

to implement. For example, with respect to RERC-TA's suggestions, such as the use of closed captioning for emergency information, in addition to crawls and aural announcements,²⁷ consumers would be bombarded with multiple images, scripts, and announcements. The result may actually limit the practical effectiveness of the emergency information²⁸ and could "unduly interrupt[]" closed captioning for individuals who depend on closed captions.²⁹

Finally, mandating closed captioning for the delivery of emergency information now could preclude the development and deployment of new technologies that could better serve broader audiences, including perhaps individuals who are deaf or hard of hearing in addition to blind or visually impaired. The Commission should avoid any such premature action, which ultimately could have the unintended effect of *limiting*, rather than promoting, the availability and accessibility of emergency information.

IV. TECHNICAL ISSUES IN IMPLEMENTING ACCESSIBLE EMERGENCY INFORMATION CAN BE RESOLVED IN THE MARKETPLACE

NAB concurs with those parties recommending that the Commission refrain from requiring any specific technology or implementation methodologies be used to meet its accessible emergency information requirements.³⁰ Such requirements can be

²⁷ See RERC-TA Comments at 4-6.

²⁸ There are also significant technical complexities with providing emergency information through closed captioning. For example, while most stations have a caption encoder, which inserts the caption data into the broadcast signals, stations do not typically have the authoring tools needed to create the caption data itself. Simply porting a text file into a caption encoder without the proper positioning and formatting commands would result in garbled captions being displayed on consumers TV receivers. Significant consideration would need to be given to how such technology could be implemented in a broadcast facility.

²⁹ *NPRM* at ¶ 13.

³⁰ See Comments of The Weather Channel, LLC, MB Docket No. 12-107, Dec. 18, 2012 at 3-4; Comments of the Telecommunications Industry Association, MB Docket No. 12-107, Dec. 18, 2012 at 10-11; CEA Comments at 10-11.

counterproductive to increasing accessibility of emergency content. For example, if a television station employs signaling to indicate the presence of “visually impaired” content in its broadcast signal,³¹ the ATSC technical standard requires the use of a specific signaling mechanism for visually impaired content delivered via the AC-3 descriptor. However, the use of such a signaling, in the near term, could cause legacy DTV receivers, which do not recognize this signaling, to react unpredictably, resulting in consumers being unable to find video descriptions or emergency audio. Likewise, cable set-top boxes require the presence of the ISO-639 audio descriptor to detect a secondary audio service in the broadcast signal. Although the ATSC standard no longer calls for the transmission of the ISO-639 descriptor,³² local broadcasters coordinate with local cable operators and continue to transmit this descriptor to ensure cable systems can pass through video descriptions and, by extension, the aural emergency information.³³ Thus, as with video described programming, there is no need for the Commission to set technical requirements for this MVPD – broadcast exchange.

Finally, broadcasters are aware that there may be potential technical and operational challenges involved with implementing Text-to-Speech (TTS).³⁴ The specific implementation of TTS will vary depending on the design and operation of each broadcast plant – there is no one size fits all solution. These challenges are best resolved in the

³¹ See *NPRM* at ¶ 24.

³² See Comments of the National Cable & Telecommunications Association, MB Docket No. 12-107, Dec. 18, 2012 at 4, fn. 13.

³³ See *Video Description; Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11859 (2011) (in which the Commission declined to specify the method of identifying video described programming).

³⁴ See Comments of Kelly Pierce, MB Docket No. 12-107, Dec. 18, 2012 at 2-5.

marketplace, between broadcasters and equipment vendors. The Commission should refrain from adopting requirements for TTS or other specific technology implementations.

V. CONCLUSION

NAB's member broadcasters 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 "Ann West Bobeck". The signature is stylized with a large, looped initial "A" and a long horizontal stroke extending to the right.

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