

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

[MB Docket Nos. 12–107, 11–43; FCC 13–45]

#### Accessible Emergency Information; Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), the Commission adopts rules requiring video programming distributors and video programming providers (including program owners) to make televised emergency information accessible to individuals who are blind and visually impaired. The Commission also adopts rules requiring the manufacturers of devices that display video programming to ensure that certain apparatus are able to make available video description and accessible emergency information.

**DATES:** Effective June 24, 2013, except for §§ 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised § 79.2(c), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Report and Order*, FCC 13–45, adopted on April 8, 2013 and released on April 9, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will

be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission’s copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

#### Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We did not receive any comments specifically addressing this issue. In the present document, we have assessed the effects of the new requirements on small businesses, including those with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (“FRFA”) below.

#### Summary of the Report and Order

##### I. Introduction

1. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), this *Report and Order* adopts rules requiring that emergency information <sup>1</sup>

<sup>1</sup> The CVAA directed the Federal Communications Commission (“Commission”) to apply here the definition of “emergency information” found in the Commission’s rules. 47 U.S.C. 613(g)(1). “Emergency information” is defined in the Commission’s rules as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.” 47 CFR 79.2(a)(2). “Critical details include, but are not limited to,

provided in video programming be made accessible to individuals who are blind or visually impaired and that certain apparatus be capable of delivering video description and emergency information to those individuals. 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. The *Report and Order* implements this mandate by requiring the use of a secondary audio stream <sup>2</sup> to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts, for example, in an on-screen crawl. This requirement, which has widespread industry support, will serve the public interest by ensuring that televised emergency information is accessible to individuals who are blind or visually impaired. Further, as directed by section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description <sup>3</sup> services and accessible emergency information. Specifically, as explained in more detail below, the apparatus rules require that certain apparatus make available the secondary audio stream, which is currently used to provide video description and which will be used to provide aural emergency information. The apparatus requirements will benefit individuals who are blind or visually impaired by ensuring that apparatus on which consumers receive, play back, or record video programming are capable of accessing emergency information and video description services. We understand that most apparatus subject to the rules already comply with these requirements. As discussed in Section III below, we adopt emergency information requirements for video programming distributors, video

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.” Note to 47 CFR 79.2(a)(2).

<sup>2</sup> A secondary audio stream is an audio channel, other than the main program audio channel, that is typically used for foreign language audio and video description.

<sup>3</sup> “Video description” is defined as “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.” 47 CFR 79.3(a)(3).

programming providers, and program owners pursuant to section 202(a) of the CVAA. Specifically, we adopt rules that will:

- Clarify that the new emergency information requirements apply to video programming provided by entities that are already covered by § 79.2 of the Commission's rules—*i.e.*, broadcasters, MVPDs, 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;
- Require that covered entities make an aural presentation of emergency information that is provided visually in non-newscast programming available on a secondary audio stream;
- Continue to require the use of an aural tone to precede emergency information on the main program audio, and now also require use of the aural tone to precede emergency information on the secondary audio stream;
- Permit, but do not require, the use of text-to-speech (“TTS”) technologies as a method for providing an aural rendition of emergency information, and impose qualitative requirements if TTS is used;
- Require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full;
- Require that emergency information supersede all other programming on the secondary audio stream;
- Decline to make any substantive revisions to the current definition of emergency information, but clarify that severe thunderstorms and other severe weather events are included within the current definition;
- Revise the emergency information rule, as required by the statute, to include video programming providers (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors, and to allocate responsibilities among covered entities;
- Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the emergency information rules adopted herein; and
- Grant waivers to The Weather Channel, LLC (“The Weather Channel”) and DIRECTV, LLC (“DIRECTV”) to provide them with additional time and flexibility to come into compliance with the rules adopted herein with regard to the provision of local weather alerts during The Weather Channel's

programming via devices that are not currently capable of providing aural emergency information on a secondary audio stream.

2. As discussed in Section IV below, we adopt apparatus requirements for emergency information and video description pursuant to section 203 of the CVAA. Specifically, we adopt rules that will:

- Require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available, because such streams are the existing mechanism for providing video description and the new mechanism for making emergency information accessible;
- Decline at this time to adopt specific performance and display standards or policies addressing certain issues from the 2011 video description proceeding;
- Permit, but do not require, covered apparatus to contain TTS capability;
- Limit applicability of the apparatus requirements, at this time, to apparatus designed to receive, play back, or record video programming provided by entities subject to §§ 79.2 and 79.3 of our rules;
- Apply the apparatus requirements to removable media players, but not to professional and commercial equipment or display-only monitors;
- Find that the apparatus requirements adopted herein apply to mobile digital television (“mobile DTV”) apparatus because such apparatus make available mobile DTV services, which are provided by television broadcast stations subject to §§ 79.2 and 79.3 of our rules;
- Implement the statutory provision that permits alternate means of compliance;
- Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the apparatus rules adopted herein; and
- Adopt procedures for complaints alleging violations of the apparatus requirements adopted herein.

## II. Background

3. Section 202 of the CVAA directs the Commission to “identify methods to convey emergency information (as that term is defined in [§] 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or visually impaired.” 47 U.S.C. 613(g)(1). Pursuant to this section, the Commission must also “promulgate regulations that require video programming providers and video programming distributors (as those

terms are defined in [§] 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.” 47 U.S.C. 613(g)(2). In addition, section 203 of the CVAA directs the Commission to prescribe rules requiring certain apparatus on which consumers receive or play back video programming to have the capability to decode and make available emergency information and video description services in a manner accessible to individuals who are blind or visually impaired, and requiring certain apparatus designed to record video programming to enable the rendering or pass through of video description signals and emergency information. 47 U.S.C. 303(u)(1), (z)(1).

4. The CVAA directed the Chairman of the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”), which was directed to develop a report that identifies performance objectives and recommends technical standards and other necessary regulations for the provision of emergency information and video description. The VPAAC's members include representatives from the industry and from consumer groups, and its recommendations thus reflect, in many cases, a consensus among regulated entities and consumers. The VPAAC submitted its statutorily mandated report addressing video description and emergency information to the Commission on April 9, 2012.<sup>4</sup> The Commission released the *NPRM* in this proceeding in November 2012.<sup>5</sup> In

<sup>4</sup> 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 portion of the 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”). The portion of the 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”).

<sup>5</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*, Notice of Proposed Rulemaking, 77 FR 70970 (2012) (“*NPRM*”). In April 2012, the Media Bureau and the Consumer and Governmental Affairs Bureau issued a Public Notice seeking comment on the portions of the VPAAC Second Report that address emergency information and video description, and the comments and reply comments received in

the *NPRM*, the Commission provided detailed background information regarding the applicable provisions of the CVAA, the VPAAC Second Report, and the current rules applicable to televised emergency information and video description, which we need not repeat here. The CVAA requires the Commission to complete its emergency information proceeding within one year of the submission of the VPAAC Second Report and to prescribe the apparatus requirements for video description and emergency information within 18 months of the submission of the VPAAC Second Report.<sup>6</sup>

5. To fulfill these statutory mandates, we adopt the rules discussed below. These rules impose new requirements with regard to the accessibility of televised emergency information for consumers who are blind or visually impaired, as well as new video description and emergency information requirements with regard to the apparatus consumers use to receive, play back, and record video programming. By ensuring the accessibility of emergency information and the availability of accessible emergency information and video description services, the regulations adopted here further the purpose of the CVAA to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”<sup>7</sup>

### III. Section 202 of the CVAA

#### A. Scope of the Emergency Information Rules

6. At the outset, we determine that the emergency information requirements adopted in this proceeding will apply to video programming<sup>8</sup> subject to § 79.2 of

the Commission’s rules that is provided by a covered entity, *i.e.*, video programming provided by television broadcast stations licensed by the Commission,<sup>9</sup> MVPDs, 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.”<sup>10</sup> This interpretation is supported by Congress’s reference to television-based definitions of video programming distributors and providers in section 202 of the CVAA. Specifically, in section 202 of the CVAA, Congress amended section 713 of the Communications Act of 1934, as amended (the “Communications Act”), to require “video programming providers and video programming distributors (*as those terms are defined in [§] 79.1 of title 47, Code of Federal Regulations*) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.” We believe that our interpretation is a

79.3(a)(4) defines “video programming” as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.” Although § 79.2 imposes requirements on covered *entities*, we find it useful to discuss the scope of the rules in terms of the *video programming* provided by covered entities, as it is such programming that must be made accessible. We discuss which entities are covered by our revised emergency information requirements in Section III.C herein.

<sup>9</sup>This includes video programming offered over mobile DTV apparatus, which is provided by television broadcast stations, a category of “video programming distributors” subject to the emergency information requirements in § 79.2(b) of our rules. 47 CFR 79.2(b). *See also* 47 CFR 79.1(a)(2) (defining “video programming distributor”). The National Association of Broadcasters (“NAB”) does not dispute that television broadcast stations must comply with the emergency information requirements in § 79.2 when providing video programming via mobile DTV apparatus.

<sup>10</sup>As noted above, the Commission’s rules state that for purposes of § 79.2, “the definitions in §§ 79.1 and 79.3 apply.” 47 CFR 79.1(a)(2), 79.2(a)(1), 79.3(a)(5). Section 79.1(a)(2) defines a “video programming distributor” as “[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, 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.” In the *NPRM*, we proposed that the emergency information rules would continue to apply only to television broadcast services and MVPD services. After further consideration of this issue, however, we believe a better approach is to describe the scope of the emergency information rules more precisely by tracking the language used in our existing rules. Thus, the rules will continue to apply to video programming provided by covered entities, which includes programming provided by broadcasters, MVPDs, 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.”

reasonable reading of the statute because reference to definitions in the television closed captioning rule evidences Congress’s intent to apply the emergency information requirements in section 613(g) of the Communications Act to video programming provided by covered entities.<sup>11</sup>

7. Although consumer groups urge the Commission to find that the rules extend more broadly to all Internet protocol (“IP”)-delivered video programming, other commenters argue that there is nothing in the statute or legislative history indicating that Congress intended to expand the scope of the emergency information rules in this manner. In addition, NAB observes that legal, practical, and technological limitations currently preclude a uniform or consistent methodology for Internet-delivered emergency information, and that delivering emergency information via IP raises issues with regard to timeliness and geographic relevance of the information. We agree that at the present time, the delivery of emergency information via IP raises issues—both in terms of scope and in terms of practicality—that currently make it difficult to achieve.<sup>12</sup> Accordingly, at this time, we find that the emergency information rules do not apply to IP-delivered video programming, such as the programming provided by online video distributors (“OVDs”) like Netflix and Hulu.<sup>13</sup> We recognize, however,

<sup>11</sup>Although section 613(g)(2) also refers to “program owners,” a term that is not defined separately in § 79.1 of the Commission’s rules, we note that the definition of “video programming provider” in § 79.1(a)(3) includes “but [is] not limited to broadcast or nonbroadcast television network and the owners of such programming.” 47 U.S.C. 613(g)(2); 47 CFR 79.1(a)(3). *See infra* Section III.C. Thus, we believe our interpretation also is consistent with Congress’s inclusion of “program owners” as responsible parties in section 202 of the CVAA.

<sup>12</sup>We also note that § 79.2(b)(2) applies the rule “to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.” 47 CFR 79.2(b)(2). Given this geographic limitation, applying the 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>13</sup>There are situations, however, where our emergency information rules do apply to IP-delivered video programming provided by a covered entity. For example, as AT&T explains, although its U-Verse service is an Internet protocol television (“IPTV”) service, AT&T is an MVPD, and, thus, the video programming offered through this service would be subject to the emergency information rules. We also note that in the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) adopted with the *Report and Order* and published elsewhere in this publication, we inquire whether an MVPD service is covered by the emergency information rules adopted herein, when an MVPD, as defined in the Commission’s rules, permits its subscribers to access linear video programming that

response to the Public Notice helped inform the *NPRM*. Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: Video Description and Access to Emergency Information*, 27 FCC Rcd 4195 (2012).

<sup>6</sup>47 U.S.C. 613(g); Public Law 111–260, § 203(d)(2). As noted, the VPAAC submitted its report to the Commission on April 9, 2012. Accordingly, the deadline for the emergency information proceeding is April 9, 2013, and the deadline for prescribing apparatus requirements is October 9, 2013.

<sup>7</sup>H.R. Rep. No. 111–563, 111th Cong., 2d Sess. at 19 (2010) (“House Committee Report”); S. Rep. No. 111–386, 111th Cong., 2d Sess. at 1 (2010) (“Senate Committee Report”).

<sup>8</sup>The Commission’s rules state that “the definitions in §§ 79.1 and 79.3 apply” for purposes of § 79.2. 47 CFR 79.1(a)(1), 79.2(a)(1), 79.3(a)(4). Section 79.1(a)(1) defines “video programming” as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.” Section

that the nature of the delivery of video programming is evolving, and in the coming years, the Commission may need to consider the regulatory implications associated with new forms of video programming services provided by covered entities.

8. We also adopt the *NPRM*'s conclusion that the emergency information rule in § 79.2 applies more broadly than the regulations governing the Emergency Alert System ("EAS"), which are found in Part 11 of our rules. The EAS rules contain the technical standards and operational procedures of the EAS, which provides the President with the ability to communicate immediately to the general public during periods of national emergency, and which may be used to provide the heads of state and local governments, or their designated representatives, with a means of emergency communication with the public in their state or local areas. The EAS has its own guidelines and requirements for message content and transmission. In contrast, § 79.2 applies to televised information about a current emergency affecting the local geographic area, intended to further the protection of life, health, safety, and property. We agree with the National Cable & Telecommunications Association ("NCTA") that the accessibility of televised emergency information required under § 79.2 is a separate matter from an activation of the EAS as governed by Part 11 of our rules. Accordingly, we clarify that the emergency information covered by this proceeding does not include emergency alerts delivered through the EAS, which are subject to separate accessibility requirements requiring the transmission of EAS attention signals and EAS messages in audio and visual formats. However, to the extent a broadcaster or other covered entity uses the information provided through EAS or any other source (e.g., information from the National Weather Service) to generate its own crawl conveying emergency information as defined in § 79.2(a)(2) outside the context of an EAS activation, it must comply with the requirements of § 79.2.

#### *B. Accessible Emergency Information Requirements*

9. Section 79.2 of the Commission's rules requires video programming distributors to make emergency

contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices. At this time, however, we find that the emergency information rules do not apply to video programming available for viewing on an Internet Web site, even if such programming is provided by a covered entity.

information accessible to individuals "with visual disabilities," and it contains separate requirements for emergency information that is presented visually during newscasts and for emergency information that is provided visually during programming that is not a newscast. With regard to emergency information provided visually during newscasts, we make no changes to the requirement that covered entities make emergency information accessible to persons with visual disabilities by aurally describing such information in the main program audio. No commenter indicates a need to revise the existing requirement applicable to emergency information provided visually in a newscast. We agree with NAB and NCTA that there is no need to change this portion of the rule because emergency information conveyed during newscasts is currently required to be accessible to individuals who are blind or visually impaired through the aural presentation in the main program audio stream. Thus, the current rule with respect to newscasts satisfies the CVAA's mandate that our regulations require covered entities to "convey . . . emergency information in a manner accessible to individuals who are blind or visually impaired."<sup>14</sup> While we are not changing the basic requirement that covered entities make emergency information provided in the video portion of a regularly scheduled newscast or newscast that interrupts regular programming accessible to persons with visual disabilities, we are expanding the rule to cover video programming providers (which includes program owners) as responsible parties, in addition to already covered video programming distributors, as required by the statute.<sup>15</sup>

<sup>14</sup> 47 U.S.C. 613(g)(2). In contrast, we revise the current rule applicable to non-newscast programming—which requires that emergency information be accompanied with an aural tone—as discussed herein to ensure that such information is conveyed in a manner accessible to individuals who are blind or visually impaired. See *infra* Section III.B.1.

<sup>15</sup> See *infra* Section III.C; 47 U.S.C. 613(g)(2). We also make a non-substantive change to §§ 79.2(b)(2)(i) and 79.2(b)(2)(ii) of the revised rule by replacing the term "persons with visual disabilities," as reflected in our current rules, with "individuals who are blind or visually impaired," as reflected in the language used in the CVAA. There is no indication in the CVAA that Congress considered there to be a substantive difference between the two phrases, nor do we intend one. We simply make this change to conform the language in our rules to be consistent with the language used in the CVAA.

#### 1. Requirements Applicable to Emergency Information Provided Visually During Non-Newscast Programming

10. We revise the portion of our rule that addresses emergency information provided visually during non-newscast programming to require that covered entities make emergency information accessible to individuals who are blind or visually impaired by aurally describing the emergency information on a secondary audio stream.<sup>16</sup> We note that the VPAAC recommended the use of a secondary audio stream to provide accessible emergency information. As explained herein, we agree that use of a secondary audio stream is the best means to implement the CVAA's directive to make emergency information accessible because many covered entities already provide or have the capability to pass through secondary audio streams, and because individuals who are blind or visually impaired have familiarity with accessing this stream for video description services. We therefore adopt the VPAAC's recommendation. Under our current rules, if emergency information is provided in the video portion of programming that is not a regularly scheduled newscast or a newscast that interrupts regular programming, it must be accompanied with an aural tone. Although the rules do not specify the parameters of the "aural tone," under standard industry practice, three high-pitched tones are used to indicate the presence of on-screen emergency information. While the aural tone alerts members of the program's audience who are blind or visually impaired that an emergency situation exists, these individuals must resort to an alternative source, such as the radio, to try to obtain more specific details about the nature and severity of the emergency. As a result, individuals who are blind or visually impaired may have inadequate or untimely access to the critical details

<sup>16</sup> We also adopt non-substantive edits to our existing emergency information rules to make the meaning more clear. As proposed in the *NPRM*, we change references in §§ 79.2(b)(2)(i) and 79.2(b)(2)(ii) of the revised rule to "[e]mergency information that is provided in the video portion" to "[e]mergency information that is provided visually." No commenter takes issue with this proposed change. Further, in § 79.2(b)(2)(ii) of the revised rule, we change the phrase "programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming" to read "programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming." NAB supports a similar change to the language in this section to clarify that the requirement applies to programming that is *neither* a regularly scheduled programming, *nor* a newscast that interrupts regular programming.

of an emergency in the local viewing area.

11. In accordance with the CVAA's mandate in section 202, we modify the current rule applicable to emergency information provided visually in programming that is not a newscast to ensure that such information is conveyed in a manner accessible to consumers who are blind or visually impaired. Specifically, if emergency information is provided visually in programming that is neither a regularly scheduled newscast nor a newscast that interrupts regular programming, we require that covered entities also make an aural presentation of this information available on a secondary audio stream. We continue to require use of the aural tone as an alerting mechanism on the main program audio, and we also now require use of the aural tone to precede emergency information on the secondary audio stream. On the main program audio, the purpose of the aural tone is to alert persons who are blind or visually impaired that visual emergency information is available. On a secondary audio stream, the aural tone has the additional purpose of differentiating audio accompanying the underlying programming from emergency information audio. Under this approach, consumers who are blind or visually impaired would be alerted to the presence of an emergency situation through the aural tone, and would then be able to promptly access the televised emergency information on the secondary audio stream. With our new rule, consumers who are blind or visually impaired no longer need to use a source other than the television to obtain the critical details of an emergency.

12. There is a general consensus in the record among both industry and consumer groups that use of the secondary audio stream is the best method to ensure accessibility of visual emergency information presented during non-newscast programming. We agree with AT&T and other commenters that requiring use of a secondary audio stream to carry aural emergency information is "a straightforward and ideal solution" because many covered entities already provide a secondary audio stream for video description or foreign language translation, and there are few technical impediments to passing through aural emergency information on a secondary audio stream. Moreover, consumers who are blind or visually impaired have familiarity with using the secondary audio stream to access video description.

13. At this time, we do not require covered entities to provide an audio stream that is dedicated solely to aurally accessible emergency information. MVPD commenters argue that mandating more than two audio streams—one for main audio, one for video description, and one for emergency information—would be costly and, in some cases, would pose technical difficulties.<sup>17</sup> We therefore agree with commenters that requiring that stations and operators use a secondary audio stream to provide aural emergency information will allow them to achieve accessibility in a more efficient and cost-effective way. Notably, no commenter suggests that we should mandate more than two audio streams. Although additional audio streams are not required, if a covered entity does provide more than two audio streams, we encourage them as a best practice to make aurally accessible emergency information available on the same audio stream that is used to provide video description, because consumers who are blind or visually impaired should have more familiarity with accessing this stream.

14. While we mandate use of the secondary audio stream to aurally transmit emergency information to consumers, we do not adopt a specific method for providing an aural rendition of textual emergency information on a secondary audio stream. In the *NPRM*, we asked about the extent to which the Commission should allow the use of text-to-speech ("TTS") technologies, which automatically generate an audio version of a textual message, and whether such technologies are sufficiently accurate and reliable for rendering an aural translation of emergency information text. The record reflects a consensus that the rules should permit the use of TTS because it

<sup>17</sup> In the *NPRM*, the Commission sought comment on the impact, if any, of the proposals contained in the *NPRM* on broadcasters' ability to channel share, which is an option for broadcast television stations that choose to participate in the Commission's incentive spectrum auction. See *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Report and Order, 77 FR 30423 (2012) ("establish[ing] the basic ground rules for sharing of broadcast channels by stations that choose to share a 6 MHz channel with one or more other stations in connection with the incentive auction"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12385, para. 84 (2012) (stating that the reverse auction of broadcast television spectrum includes three bid options for participants, one of which is "voluntary relinquishment of 'usage rights in order to share a television channel with another licensee'") (footnote omitted). Commenters did not address this issue, and we do not expect the requirements adopted herein to have any impact on channel sharing.

can be a useful and quick method to perform the text-to-aural translation of emergency information. NAB argues that use of TTS should not be mandated, however, because while TTS may be useful, it may not be the best method to effectively convey emergency information in all circumstances. In particular, NAB requests flexibility with regard to use of TTS or other specific technologies for aural translation because broadcasters may face potential technical and operational challenges in implementing TTS, and "there is no one size fits all solution."

15. Based on the record, we permit, but do not require, the use of TTS technologies as a method for providing an aural rendition of emergency information, consistent with the Commission's approach in the EAS context. While we do not require the use of TTS, we believe it is necessary to revise our rule to provide qualitative standards for TTS for covered entities that choose to use TTS. Specifically, information provided through TTS must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information.<sup>18</sup> Given the critical and urgent nature of emergency information, we expect covered entities to ensure that the aural version of textual emergency information provided through TTS is as effectively communicated to consumers who are blind or visually impaired as the textual content is conveyed to people who are able to see, and we will entertain consumer complaints about the quality of TTS.

16. *Technical Capability Exception.* We decline to adopt a technical capability exception to our new rule. Thus, unlike our approach in the *2011 Video Description Order*, we require all covered entities that provide visual emergency information that is covered by the rules to get the equipment necessary to make a secondary audio stream available by the two-year compliance deadline adopted below.<sup>19</sup>

<sup>18</sup> A covered entity's *de minimis* failure to comply with the quality standards will not be treated as a violation of the regulations.

<sup>19</sup> We note all covered entities may petition for a waiver of these requirements for good cause pursuant to § 1.3 of our rules. See 47 CFR 1.3. In particular, we note that broadcast stations in smaller markets that do not have the necessary equipment to provide a secondary audio stream can file a request for waiver of the requirements adopted herein. Given the importance of accessible emergency information, we do not anticipate that waivers will be routinely granted.

The 2011 Video Description Order reinstated a technical capability exception for certain stations and MVPDs that lack the technical capability to pass through video description. We inquired in the *NPRM* whether there are any technical capability concerns that should be taken into account in the context of providing emergency information on a secondary audio stream and, if so, how such technical capability considerations should be addressed in the rules. Some commenters support the inclusion of a technical capability exception. In particular, NAB requests that the Commission “incorporate a technical capability exception in its rules . . . 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.” According to NAB, a broadcast station should be considered to have the technical capability to support aural transcription of emergency information if it has the necessary equipment and infrastructure, except for items that would be of minimal cost, similar to the standard set forth in the video description context. The American Council of the Blind (“ACB”), on the other hand, argues that there should be more stringent standards for the technical capability exception for emergency information, and that this exception should apply only as an “absolute last resort.” We agree with ACB that the importance of providing accessible emergency information to consumers who are blind or visually impaired justifies a more rigorous standard from that adopted in the video description context.<sup>20</sup>

17. At the same time, however, we note that DISH Network L.L.C. (“DISH Network”) and DIRECTV raise concerns about spot beam capacity, which is a problem unique to direct broadcast satellite (“DBS”) providers. Spot beams allow satellite transmissions to be focused on a specific area within the footprint of the satellite, enabling DBS providers to deliver local channels to precisely defined areas. DIRECTV explains that, while it currently carries the secondary audio stream of affiliates

of the four major networks and PBS in the markets where it provides local service, it would not have sufficient capacity on its spot beams if a significant number of additional local stations were to request carriage of their secondary audio channels. Similarly, DISH Network states that it “may not have sufficient capacity in its spot beams if large numbers of local broadcast stations launch new [secondary audio] services.” The DBS providers indicate that if the Commission imposes a pass-through requirement for all local stations that provide emergency information on a secondary audio stream, capacity constraints would affect their ability to add new local-into-local markets and to comply with their “carry-one, carry-all” obligations. They argue that there is no simple remedy for this problem, as DBS providers would have to replace existing satellites or launch additional satellites to expand capacity or would have to curtail other valuable services, such as carriage of local broadcast stations or carriage of stations in HD. As such, DIRECTV and DISH Network request that the Commission take into account spot beam capacity constraints in considering an exception for DBS providers from the revised emergency information rule.<sup>21</sup>

18. We require DBS providers to pass through the secondary audio streams of all stations that provide aural emergency information pursuant to our revised rule.<sup>22</sup> Nonetheless, given the technical constraints faced by DBS providers, we recognize DIRECTV and DISH Network may require relief from the requirement to pass through secondary audio streams in specialized circumstances, *e.g.*, for any stations carried in a market where they do not have sufficient spot beam capacity, but we believe our existing waiver process is an appropriate mechanism to address

such concerns.<sup>23</sup> As we discussed in the *NPRM* in the context of section 203 obligations, the House Committee Report accompanying the CVAA recognized that DBS providers may face unique technical challenges, including capacity constraints on spot beams used to deliver local signals, which should be considered when promulgating rules. We believe that the general waiver approach, rather than the “streamlined” waiver procedure suggested by DIRECTV,<sup>24</sup> appropriately balances DBS capacity limitations with the statutory directive to make televised emergency information accessible to consumers who are blind or visually impaired. We also note that DBS providers are already required to carry stations’ “[s]econdary audio programming” pursuant to the requirements governing satellite carriage of broadcast stations in § 76.66(j) of the Commission’s rules. Thus, if either DBS provider seeks a waiver from the requirement to pass through a station’s secondary audio channel adopted in this proceeding, it will also have to justify a waiver of this portion of § 76.66(j). This makes our adopting the streamlined waiver procedure proposed by DIRECTV in this proceeding inappropriate because the issue regarding compliance with § 76.66(j) of our rules has not properly been raised in this, or any, pending proceeding.

19. We recognize that small cable systems, particularly those that are analog-only, may face unique difficulties in complying with the rules adopted herein. Although it did not file comments or reply comments in this proceeding, the American Cable Association (“ACA”) recently submitted an *ex parte* filing in which it requested that the Commission: (1) “[p]ermit hybrid digital/analog systems that do not have the equipment to pass through the broadcast [secondary audio stream] on their analog service the option of

<sup>21</sup> Specifically, DIRECTV asks that we adopt a streamlined procedure for granting a waiver of the requirement to pass through a station’s secondary audio stream in a particular market, if the DBS provider certifies that the spot beam serving the relevant market does not have sufficient capacity. DISH Network argues that “[t]he Commission should establish that, for the purposes of any new rules for accessibility of emergency information, the available capacity on the relevant spot beam should be included, among other things, in the determination of whether a DBS provider has the ‘technical capability’ to carry the [secondary audio channel] of any particular local broadcast station.”

<sup>22</sup> DISH Network represents that “DBS providers generally have the technical capability to offer secondary audio streams for local broadcast stations that they retransmit,” and DIRECTV represents that it currently passes through the secondary audio streams for the top four network affiliates and PBS in each market and that it “passes through the secondary audio channel of every station that offers it to DIRECTV today.”

<sup>23</sup> 47 CFR 1.3. A certification from the Chief Technical Officer that the spot beam serving the relevant market does not have sufficient capacity to support carriage of the secondary audio would be probative in a request for waiver.

<sup>24</sup> Specifically, DIRECTV “urge[s] the Commission to adopt a streamlined procedure for granting a waiver of any secondary audio carriage requirement in a particular market (including [§] 76.66). For example, when a DBS operator concludes that it cannot honor a request to add a new secondary audio stream from a broadcast station, a waiver would be granted if its Chief Technical Officer (or equivalent) certifies that the spot beam serving the relevant market does not have sufficient capacity to support carriage of the secondary audio without compromising the other broadcast signals carried on that beam. The waiver issued in response to such certification would remain in place for one year, subject to extension annually if the DBS operator re-certifies that it continues to have insufficient capacity to support additional secondary audio feeds in that market.”

<sup>20</sup> This action is consistent with our existing rules requiring visual access to emergency information, without exception, to people who are deaf or hard of hearing. See 47 CFR 79.2. Unlike our closed captioning rules, which permit certain exemptions, there are no exemptions applicable to our rules governing the provision of accessible emergency information to this same population because of the heightened public interest in ensuring that all viewers can access televised emergency information. See *id.* 79.1, 79.2.

making emergency information accessible to blind or visually impaired customers through that system's digital service by providing eligible customers with set-top boxes at no charge for up to three analog television sets in their home;" (2) "[p]rovide an exception for all-analog systems that serve 1,000 or fewer subscribers and lack the equipment to pass through broadcast [secondary audio stream];" and (3) "[d]efer for three years application of the emergency information pass-through requirement for all-analog systems with more than 1,000 subscribers." ACA filed a subsequent *ex parte* letter in which it further refined its proposals by requesting that the Commission: (1) Grant all all-analog systems, regardless of size, that lack the equipment to pass through secondary audio streams, an additional three years following the effective date of the revised emergency information requirements to come into compliance; and (2) address concerns raised with regard to hybrid digital/analog systems that lack the equipment necessary to pass through secondary audio streams on their analog service "by inviting the filing of class waivers on behalf of these systems." Although we are sympathetic to the issues raised by ACA, we do not believe that we have an adequate record upon which to address its proposals in the context of the instant proceeding. In this regard, we note that there are several issues surrounding ACA's proposals that have not been sufficiently developed. For example, should there be an upper subscriber limit on the hybrid digital/analog systems that are permitted to comply through an alternate means, what notification requirements should we impose on operators of analog systems to ensure their subscribers are aware of the operator's inability to provide the secondary audio stream, and to the extent that cable operators provide eligible customers with free set-top boxes, how could subscribers certify that they need such an accommodation? Accordingly, we decline to address ACA's requests at this time, finding that they would be better handled through the existing waiver process in which ACA has an opportunity to further develop its proposals and other interested parties have a sufficient opportunity to comment. Should ACA choose to file a subsequent request for waiver or extension of time, we delegate authority to the Media Bureau to address such a request. Given that the requirements we adopt herein do not take effect for two years, ACA will have sufficient time to seek a waiver in

advance of the new requirements taking effect.

20. *Alternatives to Use of Secondary Audio Stream.* We do not adopt any of the alternative methods for making emergency information accessible to consumers who are blind or visually impaired that were considered but not recommended by the VPAAC, as described in the *NPRM*.<sup>25</sup> There is little support in the record for these proposals. Although NAB, NCTA, and The Weather Channel propose that we grant covered entities flexibility in the methods used to convey emergency information in a manner accessible to individuals who are blind or visually impaired, we believe that mandating the use of the secondary audio stream to provide an aural representation of visual emergency information is a better approach to provide consistency for the viewing audience, particularly given the overwhelming support in the record for this method.

21. At this time, the record does not support taking additional steps to address the particular needs of people with both vision and hearing loss. National Public Radio, Inc. ("NPR") asks the Commission to consider alternative methods of presenting visual emergency information to persons with hearing and visual disabilities, such as use of USB connections on digital televisions to port text of Common Alerting Protocol ("CAP") messages to refreshable Braille devices. The Rehabilitation Engineering Research Center on Telecommunications Access *et al.* ("Consumer Groups") explain that televised emergency information would remain inaccessible to individuals who are blind or visually impaired and deaf

<sup>25</sup> For example, the VPAAC considered but did not recommend alternatives such as: (1) Including a shortened audio version of the textual emergency information on the main program audio; or (2) broadcasting a five to ten second audio message on the main program audio after the three aural tones to inform individuals who are blind or visually impaired of a means by which they can access the emergency information, such as a telephone number or radio station. VPAAC Second Report: Access to Emergency Information at 8. According to the VPAAC, these alternatives have disadvantages, including interruption to the main program audio that could be disruptive to viewers and the need for sufficient resources to create and manage the brief audio messages. *Id.* The VPAAC also considered but did not recommend other alternatives such as "dipping" or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location. *See id.* at 11–12. The VPAAC determined that these alternatives either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems. *Id.*

or hard of hearing if we mandate use of the secondary audio stream alone to convey emergency information provided in on-screen crawls, and that such a result is contrary to the intent of the CVAA. According to Consumer Groups, this issue can be addressed by requiring the transmission of emergency information in both the secondary audio stream and via closed captions, which would allow persons who are hearing and vision impaired to enlarge the font of the crawl and change the font color.<sup>26</sup> Although we recognize the importance of accessibility by individuals who are both blind or visually impaired and deaf or hard of hearing, we agree with NAB that we do not have a sufficient record on these complex issues to resolve them in this proceeding.<sup>27</sup> Given the importance of these issues, the Commission will consider in the future what can be done to better serve this community.

22. *Content of Emergency Information.* We do not require a verbatim aural translation of textual emergency information. At the same time, however, we require that the information presented aurally accurately and effectively communicate to consumers who are blind or visually impaired the critical details about a current emergency and how to respond to it to the same extent that this information is conveyed textually, *i.e.*, it must provide the emergency information required under § 79.2(a)(2).<sup>28</sup> We note that this requirement is consistent with the VPAAC's recommendation on this issue. NAB, Kelly Pierce, The Weather Channel, and Verizon agree that the

<sup>26</sup> Consumer Groups argue that there would be no additional burden on apparatus manufacturers beyond the requirements imposed in the *IP Closed Captioning Order*, and that the burden on video programming distributors would be minimal because they can generate closed captions through an automated process using the same text from the visual crawl or from the text processed through TTS. In contrast, NAB indicates that there would be significant technical complexities involved in providing emergency information through closed captioning, in addition to other issues that would make use of closed captioning for emergency information problematic.

<sup>27</sup> In addition, we do not address here Consumer Groups' suggestion that we revise § 79.2(b)(1)(i) of the current rule to require the use of real-time closed captioning for news programs shown in areas that are outside of the top 25 markets, because this matter is outside the scope of this proceeding and is being addressed in a separate proceeding before the Commission. *See Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, Notice of Proposed Rulemaking*, 70 FR 56150 (2005).

<sup>28</sup> Specifically, emergency information must contain "[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency." 47 CFR 79.2(a)(2).



rules should not require a verbatim translation. In particular, NAB argues that broadcasters should have editorial discretion in the aural transcription of emergency crawls because requiring a verbatim translation could divert broadcasters' attention from "complete and rapid dissemination of emergency information to policing the exact language in their screen crawls," and could lead to unnecessarily long aural announcements that may unduly interrupt video description. However, ACB and the Rehabilitation Engineering Research Center for Wireless Technologies ("Wireless RERC") recommend that the emergency information provided aurally be identical to the information that is provided textually to "ensure equivalent access" for consumers who are blind or visually impaired. We find persuasive The Weather Channel's recommendation that "the standard for the aural alert should be the same as the standard for the scroll alert, *i.e.*, both should be required to include the critical details of the emergency and instructions about how to respond." We believe that requiring information presented aurally to accurately and effectively convey the critical details of an emergency and how to respond to it as required by § 79.2(a)(2) appropriately addresses the concerns set forth by ACB and the Wireless RERC that consumers who are blind or visually impaired have equivalent access to the critical details of emergencies, while at the same time giving stations and MVPDs flexibility to carry out their responsibilities most effectively. We will entertain complaints from consumers that aural descriptions of emergency crawls are inadequate in this regard.

23. In the *NPRM*, we also asked what requirements should apply to the aural description of visual but non-textual emergency information (*e.g.*, maps or other graphic displays). Similar to the approach we adopt for textual emergency information, we find that if visual but non-textual emergency information is shown during non-newscast programming, the aural description of this information must accurately and effectively convey the critical details regarding the emergency and how to respond to the emergency, as set forth in § 79.2(a)(2).<sup>29</sup> We disagree

with NAB's contention that the rules should not impose any requirement for visual but non-textual emergency information to be described aurally because such a requirement could "limit[ ] the [broadcaster's] use of such graphic information in order to comply with the rules," and "could be infeasible if automated TTS is used." The record does not support a finding that it would be overly burdensome for covered entities to provide an aural description of the critical details provided in a graphic display (such as a map) for the purpose of conveying emergency information (*e.g.*, a list of the counties, cities, or other locations affected by the emergency as shown on the map). Further, even if a broadcaster employs TTS technologies, the critical details of the emergency information conveyed in the graphic display can be included in the text that will be converted to speech using such technologies, provided that the description of non-textual emergency information is inserted as text before the TTS conversion takes place. Accordingly, we require that an aural description of such emergency information be provided on the secondary audio stream.

24. We require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full to ensure that consumers are able to hear all of the information after they switch from the main program audio to the secondary audio stream. Commenter Kelly Pierce explains that "many blind people are tuned to the main audio stream because of its superior audio quality," and these individuals will need time to switch from the main program audio to the secondary audio stream to obtain emergency information. For this reason, Mr. Pierce recommends, and no one opposes, that the Commission require a delay in providing emergency information on the secondary audio

consistently with the purpose of the image. We believe our approach to require the critical details of non-textual emergency information to be provided is consistent with ACB's and the Wireless RERC's proposals because it will ensure that meaningful and useful details are conveyed to consumers. We also find that, as proposed by ACB, our approach is consistent with DOJ's "effective communication" standard that is applied to state and local governments under Title II of the Americans with Disabilities Act ("ADA"). This ADA standard requires a public entity to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 CFR 35.160(a)(1). As noted above, we similarly require the emergency information provided aurally to be as accurate and effective as is the emergency information conveyed textually for people who are able to see.

stream or, alternatively, require the information to be provided immediately on the secondary audio stream but repeated so that consumers who are blind or visually impaired can hear it at least twice. Because there may be individuals who are blind or visually impaired who are already tuned to the secondary audio stream (*e.g.*, for video description), we do not think it is appropriate to impose a delay on airing emergency information on the secondary audio stream. Instead, we believe the better approach is to require covered entities to convey emergency information at least twice on the secondary audio stream so that individuals switching from the main program audio will be able to hear the emergency information in its entirety. To better assist consumers who are blind or visually impaired, we encourage providers of emergency information, in appropriate circumstances and at their discretion, to convey the emergency information more than twice. This would be particularly appropriate during portions of the day when the secondary audio stream is silent or merely duplicates the main program audio, because there would be no potential to disrupt the provision of video-described programming on the secondary audio channel during those times, a concern that was raised generally by NAB, and because individuals who are blind or visually impaired can switch from the secondary audio channel to the main program audio if they prefer to hear audio associated with the underlying programming.

25. *Priority of Emergency Information.* We find that emergency information should be prioritized over all other content on the secondary audio stream. Thus, we revise § 79.2 to require that aural emergency information supersede all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream.<sup>30</sup> Commenters resoundingly support having emergency information take priority over video description or any other content that may be present on the secondary audio

<sup>29</sup> ACB suggests that the verbal rendition of information provided in maps, photographs, or other illustrative data should be conveyed meaningfully, using the Department of Justice's ("DOJ") "effective communication" standard. The Wireless RERC argues that covered entities should not exactly replicate non-textual, visual information in the audio, but should use the attributes of alternative text to describe what is being shown

<sup>30</sup> NAB argues "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." We agree with NAB. Once a covered entity goes to the expense and effort to comply with our video description rules for a particular program, that program should count toward that entity's video description total even if the video description is partially or wholly interrupted by aural emergency information.



stream.<sup>31</sup> Currently, the Commission's rules prohibit emergency information from blocking video description, and they prohibit video description from blocking emergency information provided by means other than video description. Because textual emergency information will be conveyed aurally utilizing the same audio stream as used for video description, the VPAAC recommended eliminating the proscription against emergency information blocking video description. In accordance with the VPAAC's recommendation, we delete the proscription against emergency information blocking video description. In the *NPRM*, we proposed to amend § 79.2(b)(3)(ii) of the current rule to read: "Any video description provided should not block any emergency information." After further consideration of this issue, however, we believe that use of the term "*supersede*" here is more appropriate than use of the term "*block*," because "*supersede*" more appropriately applies to the insertion and prioritization of aural programming on the secondary audio stream.<sup>32</sup> Thus, we require covered entities to ensure that aural emergency information provided in accordance with § 79.2(b)(2)(ii) of our revised rule *supersedes* all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream. This change is consistent with the VPAAC's recommendation and with the record, which support prioritizing emergency information.

26. While we find that emergency information should supersede any other content provided on the secondary

audio stream, we do not impose requirements with regard to what should be provided on the secondary audio stream when emergency information is not being provided, aside from our current video description requirements. We note that the VPAAC recommends that covered entities use best efforts to transmit the main program audio on the secondary audio stream when emergency information, video description, or alternate language audio are not present, rather than maintaining a silent channel. We agree with this recommendation and find that this approach would enable consumers to tune to the secondary audio stream all of the time, instead of needing to switch back and forth from the main program audio when video description or emergency information is available.

27. *Provision of Customer Support.* We do not at this time require covered entities to provide specific customer support services to assist consumers who are blind or visually impaired with accessing emergency information on the secondary audio stream, but we seek further comment on this issue. Although expressly raised in the *NPRM*, there was little comment on this issue. The American Foundation for the Blind ("AFB") argues in favor of imposing requirements for identification and training of appropriate points of contact to assist with accessing emergency information on the secondary audio stream. On the other hand, AT&T argues that covered entities should have the flexibility to educate customers on use of the secondary audio stream, and NCTA contends that additional rules in this area are unnecessary because "cable operators currently provide customer support for handling video description concerns." Given the lack of detailed comment on this issue, we seek further comment in the *FNPRM*. While we do not prescribe specific requirements for customer support services at this time, we believe that customer service representatives of covered entities should be able to answer consumer questions about accessing emergency information. Additionally, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact, as well as other information about how to seek assistance, on their Web sites and in other informational materials distributed to the public.

## 2. Definition of Emergency Information

28. We do not make any substantive revisions to the current definition of emergency information. Emergency

information is defined in § 79.2(a)(2) as "[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency." Critical details regarding an emergency "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." The definition provides "[e]xamples of the types of emergencies covered," which "include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather." In the *NPRM*, we asked whether the definition of emergency information should be updated to include additional examples of emergencies. Of the two commenters who address this issue, NCTA indicates that the Commission should not expand the definition, and NAB proposes narrowing the definition "to strike an appropriate balance" with other services provided on the secondary audio stream. Specifically, NAB asks us to apply the definition only to "critically urgent information" and to delete certain categories of emergency information from the list of examples.<sup>33</sup> Given that no party favors expanding the definition and because the record presents no compelling reason to expand a definition that has served the public interest for over ten years, we decline to include additional examples in the definition of emergency information. However, we also do not

<sup>31</sup> We agree with the majority of commenters that the provision of emergency information, which is, by definition, "intended to further the protection of life, health, safety, and property," should be prioritized over video description, which is typically provided for prime-time and children's programming. 47 CFR 79.2(a)(2), 79.3(b).

<sup>32</sup> In contrast, the term "block," which refers to an obstruction, is appropriate in the context of closed captioning, where the rules are intended to address the overlap of visually presented information, namely closed captioning and visual emergency information. See 47 CFR 79.2(b)(3)(i) (stating that "[e]mergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning"). Although we make no substantive changes to § 79.2(b)(3)(i) of the current rule, we make a minor revision to change "should" to "does," which is the grammatically appropriate word to use in conjunction with the term "must ensure." See *infra* Appendix B (Final Rules), § 79.2(b)(4) ("Video programming distributors must ensure that emergency information *does* not block any closed captioning and any closed captioning *does* not block any emergency information provided by means other than closed captioning.") (emphasis added).

<sup>33</sup> Specifically, NAB recommends that we delete "school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather" from the examples of emergency information in § 79.2(a)(2), because such categories are "helpful, but not critical." NAB argues that such a revision will "ensure that video described programming is not continuously disrupted during significant weather events." NAB also asks the Commission to specify that "the emergency crawls to be aurally transcribed under the new rules will be generally limited to locally-provided (*i.e.*, licensee-provided) information." We do not think it is necessary to adopt NAB's proposed specification because the rule currently states that § 79.2 "applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring." 47 CFR 79.2(b)(2).

think it is appropriate to narrow the definition in the interest of lessening the impact on other services provided on the secondary audio stream, given the higher priority of emergency information.

29. We also specifically inquired in the *NPRM* whether severe thunderstorms are currently considered to be emergencies subject to our rule and, to the extent they are covered, whether they should be added to the list of examples in the rule. No commenter addresses this question. While we do not explicitly add severe thunderstorms to the list of examples, we interpret the current definition to include severe thunderstorms and other severe weather events because they are similar to other types of emergencies listed as examples in terms of severity and because these events could threaten life, health, safety, and property.

30. Although we reject NAB's recommendation that we modify our current emergency information definition to delete school closings and school bus schedule changes from the list of examples, we revise the requirements applicable to the provision of such information for purposes of the rules adopted in this proceeding. As required by the rule, the visual information regarding school closings and school bus schedule changes aired during non-newscast programming must be made accessible to individuals who are blind or visually impaired (*i.e.*, there must be an aural tone before the crawl on the main program audio, and the information conveyed in the crawl must be preceded by an aural tone and provided aurally on the secondary audio channel), if the school closings and school bus schedule changes result from a current emergency as defined in § 79.2(a)(2). We leave it to the good faith judgment of the broadcaster or other covered entity to decide whether school closings and school bus schedule changes result from a situation that is a current emergency based on its severity and potential to threaten life, health, safety, and property.<sup>34</sup> However, given the potential length of information about school closings and school bus schedule changes and therefore its potential to interfere with video description,<sup>35</sup> we find that, during a

video-described program, covered entities have the option to air a brief audio message on the secondary audio stream at the start of the crawl indicating that this information will be aired at the conclusion of the video-described programming, and to subsequently provide this information aurally on the secondary audio stream at the conclusion of the video-described programming.

### *C. Responsibilities of Entities Subject to Section 202(a) of the CVAA*

31. Congress directed the Commission to "require video programming providers and video programming distributors (as those terms are defined in § 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired." Thus, in the *NPRM*, we sought comment on definitions of the terms "video programming providers," "video programming distributors," and "program owners," and we inquired about the roles and responsibilities of these various entities. We address each of those issues in turn below.

32. *Definition of Video Programming Providers and Video Programming Distributors.* We apply the current definitions for "video programming distributor" and "video programming provider" in § 79.1 to the emergency information rule, and we find that it is unnecessary to create a separate definition for "program owner."<sup>36</sup> The emergency information provision in section 202(a) of the CVAA applies to "video programming provider" and "video programming distributor" "as those terms are defined in" § 79.1 of the Commission's rules and, accordingly, we need not create new definitions for those terms. NAB supports this

suggestion to air this information in full once per hour may still significantly interfere with video description and, thus, may not be a feasible solution.

<sup>36</sup> Section 79.1 defines a "video programming distributor" as "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, 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 CFR 79.1(a)(2). We do not need to apply the remainder of the "video programming distributor" definition to the emergency information rule, as that portion is specific to the closed captioning context. Section 79.1 also defines a "video programming provider" as "[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming." *Id.* 79.1(a)(3).

approach. However, section 202(a) also references "program owners" without defining this term. In the *NPRM*, we explained that the definition of "video programming provider" in § 79.1 includes but is not limited to a "broadcast or nonbroadcast television network and the owners of such programming." Thus, we asked whether it is necessary to separately define a "program owner" for purposes of our implementing regulations, given that the definition of "video programming provider" in § 79.1 encompasses program owners. No commenter addresses this specific issue. We also sought comment in the *NPRM* on whether to define a "program owner" consistent with the definition of "video programming owner" adopted in the IP closed captioning context. NAB argues that the Commission should not impose definitions from the IP closed captioning rules in the emergency information context because "[t]hose definitions are unnecessary and unhelpful here," because, for example, "a [video programming owner], such as [a] network or a syndicator, would not have any knowledge that a licensee was crawling local emergency information over their programming at the station level." No other commenter addresses this issue. We agree with NAB that is not necessary to use the definition of "video programming owner" from the IP closed captioning rule. The record shows that the entities that typically insert emergency information into crawls are broadcasters, which are already covered as video programming distributors, and that, other than The Weather Channel, which is both a network program owner and video programming provider, program owners do not typically create emergency crawls. Because the current definition of "video programming provider" already includes but is "not limited to broadcast or nonbroadcast television network and the owners of such programming," we interpret this definition to include the owners of any "video programming that is intended for distribution to residential households" by a video programming provider.<sup>37</sup> Thus, we see no public interest benefit in creating a separate definition of the term "program owner." While not separately defined, however, program owners are subject to applicable accessible emergency information requirements, as explained below.

33. *Obligations of Video Programming Providers and Video Programming Distributors.* We revise the emergency information rule to include video

<sup>34</sup> We will not sanction broadcasters or other covered entities for a reasonable exercise of their judgment as to whether school closings and school bus schedule changes result from a situation that is a current emergency.

<sup>35</sup> While we agree with the concern about the potential of school closing and bus schedule change information to impede video description, we believe that, given the typical length and duration of these types of announcements, ACB's and AFB's

<sup>37</sup> 47 CFR 79.1(a)(3) (emphasis added).

programming providers as defined in § 79.1 (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors. Currently, § 79.2(b)(1) of our rules provides that video programming distributors must make emergency information accessible to individuals with visual disabilities, but our rules do not currently impose related requirements on video programming providers and program owners. However, section 202 of the CVAA directs us to impose accessible emergency information requirements on video programming providers and program owners, as well as on video programming distributors. In the *NPRM*, we asked for comment on the roles that the various entities listed in section 202 should play in ensuring that emergency information is conveyed in an accessible manner. We further inquired whether video programming distributors should hold primary responsibility, with video programming providers and program owners prohibited from interfering with or hindering the conveyance of accessible emergency information, or whether certain responsibilities should be allocated to each of the entities specified in section 202.

34. The record reflects support for allocating responsibility among each of the entities specified in section 202. A number of commenters emphasize that the allocation of responsibility should be based on the roles that each entity has with regard to making non-newscast emergency information accessible. Specifically, MVPD commenters explain that local broadcasters are the entities that typically create emergency information crawls and scrolls and, therefore, they should be responsible for providing an aural version of this information on the secondary audio stream. According to MVPD commenters, because MVPDs typically have no role in creating or managing the content of visual emergency information, they should not be required to produce the information in an aurally accessible format. Instead, these commenters suggest that MVPDs should be required to pass through aural emergency information that is provided by broadcasters and other video programming providers and owners. This description of the roles of the various entities was not disputed in the record.

35. We conclude that each entity specified in section 202(a) should be responsible for compliance with the emergency information rule, and we

revise the portions of § 79.2 applicable to accessibility of emergency information for individuals who are blind or visually impaired accordingly to add video programming providers (which includes program owners) and to more clearly specify the obligations of covered entities. First, we find that among video programming distributors and video programming providers, the entity that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone.<sup>38</sup> Second, we find that video programming distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers. This will allow us to take enforcement action not only against a non-compliant video programming distributor, but also against a program provider or owner that does not comply with its obligation to make visual emergency information accessible to consumers who are blind or visually impaired.<sup>39</sup> We also revise the rule to indicate that both video programming distributors and video programming providers are responsible for ensuring that emergency information supersedes any other programming on a secondary audio channel, with each entity responsible only for its own actions or omissions in this regard.

<sup>38</sup> We do not limit this obligation to video programming providers and program owners as some commenters suggest because local broadcasters who typically create emergency crawls are “video programming distributors” by definition, and because we believe that to the extent an MVPD does create a crawl or other visual graphic conveying local emergency information as defined in § 79.2 and embeds it in non-newscast programming, it should also be responsible for making the visual emergency information aurally accessible.

<sup>39</sup> NAB argues that the rules should ensure that broadcasters’ aural emergency messages are not overridden by aural messages provided by an MVPD, and that broadcasters should not be subject to a finding of non-compliance if emergency information provided by the broadcaster is interrupted or overridden by an MVPD carrier. We believe our rules address these concerns because they assign liability for non-compliance based on each covered entity’s acts or omissions. To the extent aural emergency information provided by a broadcaster is interrupted or overridden by aural emergency information provided by another covered entity, the broadcaster can raise this claim as a defense to any complaint or enforcement action. In addition, MVPDs are prohibited from altering a broadcaster’s video feed, and the record indicates that MVPDs do not typically create local emergency information crawls, so we expect this problem to be extremely rare.

#### D. Compliance Deadlines

36. We adopt a deadline of two years from the date of **Federal Register** publication for compliance with the emergency information rules adopted herein. In the *NPRM*, the Commission inquired as to the appropriate time frame for requiring covered entities to convey emergency information in a secondary audio stream and noted that the VPAAC did not reach agreement as to recommended deadlines. Few commenters discuss the appropriate compliance deadline, with ACB suggesting a one year deadline and NAB suggesting a phased-in approach ranging from 36 months to 42 months. While we note ACB’s explanation that there is an existing infrastructure for providing content via the secondary audio channel, we also find that even stations that already use a secondary audio stream may find it necessary to take a number of steps to achieve compliance, such as: (1) implementing software that transfers crawls into text that can be synthesized into audio; (2) integrating the software with the station’s computer system; and (3) testing the system.<sup>40</sup> However, we find that 36 months is an unnecessarily long period of time to achieve these steps, given that in prior proceedings we have found that software and product development, along with time for testing and implementation, are achievable within a two year period. Accordingly, based on our review of the record, we conclude that a compliance deadline of two years after **Federal Register** publication is reasonable. We decline to implement a phased-in approach with a later deadline for stations that do not currently have a secondary audio stream, because we expect such stations to work concurrently to establish their secondary audio streams and to take other necessary steps towards compliance.

37. *The Weather Channel Waiver for Emergency Information on Cable Systems.* The Weather Channel expresses unique concerns regarding the compliance deadline. The Weather Channel is a nationally distributed programming network that provides not only national weather information, but also localized weather information, including breaking weather news and alerts, to its subscribers nationwide, which makes it a video programming

<sup>40</sup> Contrary to the suggestion of ACB and AFB, the record indicates that broadcasters currently use graphics machines to generate on-screen crawls and will need to work with vendors to develop an interface solution that will translate graphics into text. However, we note that at least one entity already has developed software that turns characters input as an image into text.

provider covered by the revised emergency information rule. To ensure that viewers are able to see locally relevant weather information on cable systems, including information on severe weather emergencies, The Weather Channel has deployed thousands of its “WeatherSTAR” devices<sup>41</sup> in cable headends throughout the country, with six different generations of these devices in service. While the most recent models are capable of providing emergency information aurally, none is currently capable of using a secondary audio stream to do so.<sup>42</sup> The Weather Channel estimates that it would need at least 30 months to comply with the requirements adopted herein for cable systems.

38. We grant The Weather Channel a six-month waiver beyond our established compliance deadline of the requirement to provide aural emergency information on a secondary audio stream when local emergency information is provided visually during The Weather Channel’s programming on cable systems.<sup>43</sup> Thus, The Weather Channel will have 30 months to comply with this requirement. We conclude that there is good cause to support this waiver because The Weather Channel will need to upgrade or replace all of its WeatherSTAR devices to provide emergency information aurally on a secondary stream, as required herein. As a condition of the waiver, however, we require that as of the general two-year compliance deadline, The Weather Channel must provide its local emergency information on cable systems in a manner that is accessible to individuals who are blind or visually impaired on devices that are capable of providing aural alerts, but it need not use the secondary audio channel to do so prior to the end of the waiver period.

39. We also grant The Weather Channel a six-month waiver beyond the general compliance deadline from our rule requiring covered entities to provide all of the critical details of an emergency that are included in the text when it provides local emergency

information visually on cable systems. During the six-month waiver period, The Weather Channel will be permitted instead to provide a limited aural announcement about the emergency that is reported. We conclude that there is good cause to support this temporary waiver because, as The Weather Channel explains, if it is required to provide an aural announcement on its main programming that includes all of the critical details of an emergency and how to respond, this “would lead to the complete disruption of TWC programming—often for hours at a time—during many alerts.” At the end of the waiver period,<sup>44</sup> we require The Weather Channel to be fully compliant with the emergency information rules adopted herein for all of its programming on cable systems.

40. *DIRECTV Waiver for Emergency Information from The Weather Channel.* We also grant DIRECTV a 12-month waiver of the requirement to provide aural emergency information when local emergency information is provided visually during The Weather Channel’s programming on DIRECTV systems, as well as a waiver of the following requirements on DIRECTV’s systems: (1) Providing aural emergency information on a secondary audio channel; (2) providing all of the critical details of an emergency that are included in the text; and (3) providing audio functionality on all set-top boxes.<sup>45</sup> The record indicates that DIRECTV faces its own unique challenges to making The Weather Channel’s localized weather information aurally accessible to DIRECTV’s

customers, and that use of a secondary audio stream to provide detailed emergency information in the DIRECTV context is not feasible. We believe that these challenges justify additional time for implementation. Currently, DIRECTV has an “interactive application through which it . . . provides visual emergency information to subscribers as they watch The Weather Channel.” DIRECTV’s application “enables the set-top box to pull localized alerts from the national Weather Channel feed for the zip code provided by the subscriber,” but currently, “there is no audio accompanying this information.”<sup>46</sup> DIRECTV explains that it needs a waiver for several reasons. First, if the Commission requires DIRECTV to make The Weather Channel’s localized information available on the secondary audio stream, DIRECTV says that it would “face considerable challenges” because it “transmits national cable channel[s] on a nationwide satellite beam.” Second, DIRECTV states that it would need three years to “enable a majority of its set-top boxes with . . . emergency audio capability.” Third, DIRECTV reports that this functionality cannot be implemented on all DIRECTV set-top boxes. Fourth, while it is possible to add audio messages to many of its set-top boxes to capture the nature of local weather emergencies presented visually on The Weather Channel, DIRECTV explains that those audio messages cannot be as detailed as the emergency information that is presented visually because “constraints imposed by the bandwidth available in the satellite network and processing power in the set-top box, as well as the potential lack of a broadband connection to the subscriber’s home, limit the amount of information that can be presented aurally.”<sup>47</sup>

41. For the various reasons enumerated by DIRECTV, we grant DIRECTV a 12-month waiver beyond

<sup>41</sup> The Weather Channel transmits local weather information for the entire country in a single, satellite-delivered data stream, and its WeatherSTAR device “filters the national satellite data stream and permits only geographically relevant information to be delivered to each viewer.”

<sup>42</sup> The Weather Channel indicates that approximately 12 percent of WeatherSTARs could be upgraded to implement a secondary audio channel, while the remaining 88 percent of devices would need to be replaced to implement a secondary audio channel, at an estimated cost of at least \$14 million, which is largely non-recoverable.

<sup>43</sup> 47 CFR 1.3.

<sup>44</sup> The waivers will expire 30 months from the date of **Federal Register** publication.

<sup>45</sup> The waiver applies only to DIRECTV and not to DISH Network because DIRECTV “provides visual emergency information to subscribers as they watch The Weather Channel” as a linear program provided by DIRECTV. Subscribers are able to do this by accessing an interactive application via their remote control. In contrast, DISH Network does not currently provide visual emergency alerts to subscribers that watch The Weather Channel via DISH Network’s linear programming. Instead it “offers a standalone application for The Weather Channel, which is accessible in the interactive features of select DISH set-top box models with a broadband Internet connection” that “is not integrated with The Weather Channel linear TV channel.” Thus, DISH Network is not providing visual emergency information during The Weather Channel’s video programming that would make it subject to the emergency information requirements adopted herein. Additionally, while in the cable context discussed above we grant a waiver to The Weather Channel because of the additional time necessary for it to provide localized emergency information via the secondary audio stream, here we grant a waiver to DIRECTV and not The Weather Channel because, as DIRECTV explains, “The Weather Channel does not itself include any textual emergency alert information that would be subject to the rules,” and “[i]t is only the applications provided by the [DBS] distributors that make such alerts available at all.”

<sup>46</sup> When DIRECTV subscribers are tuned to The Weather Channel, local weather alerts for the viewing area are “presented as a visual weather alert banner at the top of the screen,” accompanied by three aural tones, along with a visual direction to press the red button on the handheld remote to access an alert page with additional detail related to the weather conditions in the area.

<sup>47</sup> DIRECTV proposes to pre-load audio messages in many of its set-top boxes that will “capture the nature of the weather emergency.” This approach would involve the capability to provide only a very brief audio message with limited details about the emergency (e.g., “A tornado watch is in effect for your area”), and would not include more specific information about the location or times of the emergency. DIRECTV argues that more specific locational information is unnecessary because the on-screen alert will only be picked up by set-top boxes in the zip codes affected by the emergency.

our established compliance deadline of the requirement to provide an aural presentation of local emergency information that is provided visually during The Weather Channel's programming on DIRECTV systems, so that DIRECTV has the extra time it needs to enable audio functionality in its set-top boxes. This waiver will extend until the date 36 months from **Federal Register** publication. We believe that there is good cause to permit DIRECTV an additional year beyond the general compliance deadline to comply with the requirement to provide an aural presentation of The Weather Channel's local emergency information because its current set-top boxes are not capable of providing aural emergency information. DIRECTV states that it will take three years to enable audio functionality in certain set-top boxes because adding such functionality "require[s] a new design to deliver the necessary audio files, as well as additional satellite bandwidth . . . ." For these reasons, we find a temporary waiver warranted. We note, however, that we may revoke or modify this waiver if circumstances change such that the waiver is no longer in the public interest.

42. We also grant DIRECTV a waiver of the requirement to provide aural emergency information on a secondary audio channel and the requirement to provide all of the critical details of an emergency that are included in the text when local emergency information is provided visually during The Weather Channel's programming on DIRECTV systems. We are persuaded that national cable channels are carried on a nationwide satellite beam, not on localized spot beams, and thus, carriage of localized audio streams for The Weather Channel is not feasible on DIRECTV systems.<sup>48</sup> At a minimum, consistent with DIRECTV's proposal, we require the aural version of the emergency information that DIRECTV provides to capture the nature of the emergency (e.g., "A tornado watch is in effect for your area"), and we require DIRECTV to provide that aural version to viewers whose set-top boxes are associated with zip codes in the affected area. We note that local weather alerts generated by The Weather Channel's application are provided only to subscribers in the zip codes affected by

the emergency and, thus, all subscribers, including subscribers who are blind or visually impaired, would know that the emergency is taking place in the local viewing area. We recognize that, as a technical matter, it is not feasible for DIRECTV to provide more specific information such as individual localities affected and times of the emergency, because, as DIRECTV explains, currently "the satellite capacity and other resources necessary to convey that additional information . . . would be prohibitive."

43. Finally, we grant DIRECTV a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information. In this regard, however, we condition such relief by requiring DIRECTV to provide, upon request and at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require reasonable documentation of disability as a condition to providing the box at no additional cost.<sup>49</sup>

44. Thus, as of the date 36 months from **Federal Register** publication, DIRECTV must provide an aural presentation of visual emergency information displayed on The Weather Channel. DIRECTV is not required to use the secondary audio channel to provide an aural presentation of visual emergency information displayed on The Weather Channel, and it may use limited aural messages, in accordance with its proposal. Additionally, as explained above, DIRECTV need not provide this functionality on all of its set-top boxes, but it must provide at no additional cost to customers who are blind or visually impaired a set-top box model that is capable of providing the aural emergency information. In granting this waiver, we are guided by Congress's directive to consider the unique technical challenges faced by DBS providers when promulgating rules. We believe that the costs of requiring DIRECTV to comply fully with these rules would outweigh the benefits. As DIRECTV has mentioned, if it "finds

that it cannot comply with requirements imposed in this proceeding, it may have to discontinue [The Weather Channel] application." We believe that DIRECTV is providing a critical service to its subscribers and we want to ensure that our regulations do not impede its ability to continue offering these localized emergency alerts. At the same time, we note that we may revoke or modify these waivers if circumstances change such that the waivers are no longer in the public interest.<sup>50</sup>

#### E. Complaint Procedures

45. We revise the complaint procedures for emergency information contained in § 79.2(c) of the Commission's rules to include video programming providers, to indicate that the complaint should be transmitted to the Consumer and Governmental Affairs Bureau, and to add the Commission's online informal complaint filing system as a method of transmitting a complaint to the Commission.<sup>51</sup> In the *NPRM*, the Commission asked if its proposal to amend the emergency information requirements in § 79.2 of the Commission's rules necessitates changes to the existing complaint procedures. No commenter addresses this issue. Because we are revising the rule to include video programming providers as responsible parties, we revise § 79.2(c) to indicate that complaints can be filed against video programming providers, as well as video programming distributors.

46. Pursuant to the revised rule, a complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate

<sup>50</sup> It is possible that the Commission could adopt requirements in its implementation of sections 204 and 205 of the CVAA that supersede the terms of this waiver. In that case, DIRECTV must comply with the rules adopted pursuant to these sections. For example, section 205 of the CVAA directs the Commission to require that on-screen text menus and guides for the display or selection of multichannel video programming on navigation devices provided by MVPDs to their subscribers "are audibly accessible in real-time upon request by individuals who are blind or visually impaired." 47 U.S.C. 303(bb)(1). The CVAA provides that, with respect to this requirement, the Commission shall provide affected entities with "not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements." Public Law 111-260, § 205(b)(6)(A)(ii).

<sup>51</sup> The Consumer and Governmental Affairs Bureau reserves the discretion to refer complaints that reveal a pattern of noncompliance to the Commission's Enforcement Bureau.

<sup>48</sup> As noted above, DISH Network is not providing visual emergency information during The Weather Channel's video programming that would make it subject to the emergency information requirements adopted herein and, therefore, it does not need a waiver of the requirement to provide an aural presentation of visual emergency information on a secondary audio stream.

<sup>49</sup> For example, we believe that documentation from any professional or service provider (e.g., a social worker) with direct knowledge of the individual's disability would be reasonable. See, e.g., *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 76 FR 26641, 26642-43, para., 7 (2011) ("requiring individuals seeking equipment under the NDBEDP to provide verification from any practicing professional that has direct knowledge of the individual's disability," who "must be able to attest to the individual's disability").

the complainant's disability. The complaint should include the name of the video programming distributor or the video programming provider against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor or the video programming provider of the complaint, and the distributor or the provider will reply to the complaint within 30 days.

#### IV. Section 203 of the CVAA

47. Section 203 of the CVAA directs the Commission to impose certain emergency information and video description requirements on apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound. The Commission must prescribe these requirements by October 9, 2013. The section 203 regulations we adopt must include "any technical standards, protocols, and procedures needed for the transmission of" video description and emergency information. Below we set forth requirements for apparatus pertaining to emergency information and video description, and we specify what apparatus are subject to these obligations. Our section 203 discussion is focused on the availability of secondary audio streams because that is both the existing mechanism for providing video description and the mechanism adopted herein for making emergency information accessible. Given our understanding that most covered apparatus already make secondary audio streams available today, we do not expect the apparatus rules to impose undue hardship on equipment manufacturers.

##### A. Apparatus Requirements for Emergency Information and Video Description

48. We codify language comparable to that found in section 203 of the CVAA to explain what covered apparatus must do to comply with the emergency information and video description requirements. Specifically, we require all "apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size," to "have the capability to decode and make available" the secondary audio stream, which will facilitate the following services: (1) "the transmission and delivery of video description services as required by" our video description rule; and (2) "emergency information (as that term is

defined in [our emergency information rule, § 79.2 of this Part]) in a manner that is accessible to individuals who are blind or visually impaired."<sup>52</sup> It is our understanding that most apparatus subject to the rules already comply with these requirements. In the discussion that follows, we discuss more specifically the compliance requirements for manufacturers of covered apparatus to ensure that video description services and emergency information provided via a secondary audio stream are available and accessible to individuals who are blind or visually impaired.

##### 1. Performance and Display Standards

49. Section 203 of the CVAA directs the Commission to "provide performance and display standards for . . . the transmission and delivery of video description services, and the conveyance of emergency information. . . ." In accordance with the statutory language discussed above, our rules will require covered apparatus to decode and make available the secondary audio stream, in a manner that enables consumers to select the stream used for the transmission and delivery of emergency information and video description services.<sup>53</sup> Accordingly, covered apparatus must take any steps necessary to decode the secondary audio stream used in the provision of these services. We agree with commenters that, at this time, more specific technical standards might hinder innovation in the marketplace as manufacturers develop improved means of decoding and making available the secondary audio stream. Our record-based understanding that most covered apparatus already enable customers to access the secondary audio stream, in the absence of any specific requirement, demonstrates that specific, as opposed to general, performance and display standards are not currently needed. As the Consumer Electronics Association ("CEA") notes, declining to adopt specific performance and display standards here is consistent with the *ACS Order*, in which the Commission adopted general performance objectives instead of more specific criteria.<sup>54</sup>

<sup>52</sup> We note that the regulatory text adopted herein includes certain minor modifications from that proposed in the *NPRM*, in an effort to better correspond to the statutory language.

<sup>53</sup> Proposals regarding accessible user interfaces are outside the scope of this proceeding; they will be covered by the forthcoming proceeding implementing sections 204 and 205 of the CVAA.

<sup>54</sup> *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and

50. We do not require apparatus to contain any TTS capability at this time, although we do not prohibit manufacturers from including TTS capability in an apparatus.<sup>55</sup> In the *NPRM*, we sought comment on whether apparatus should have the capability to make textual emergency information audible through the use of TTS. Commenters strongly object to imposing such a requirement on apparatus because compliance would be costly, and because requiring apparatus itself to convert a text crawl into audio through the use of TTS would change the device from having a passive role of passing through information to having an active role of creating the oral emergency message from the text version. Based on these comments, we find that the costs of requiring apparatus manufacturers to include TTS capability would outweigh the benefits, given that other entities are already required to ensure that emergency information is converted from text format to an aural format. Although we do not, at this time, require apparatus to contain any TTS capability, we may revisit this issue in the future if circumstances evolve such that requiring TTS capability in the apparatus would be a preferable approach.

##### 2. Recording Devices

51. Similar to our treatment of apparatus that receive or play back video programming, as discussed above, we codify language comparable to that found in section 203 of the CVAA to explain what recording devices must do to comply with the emergency information and video description requirements. Specifically, we require all "apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States," to enable the presentation or the pass through of the secondary audio stream, which will facilitate the

Further Notice of Proposed Rulemaking, 76 FR 82354 (2011) ("*ACS Order*").

<sup>55</sup> In the context of the requirements adopted pursuant to section 202 of the CVAA, we provide qualitative standards for TTS for covered entities that choose to use TTS. We do not impose such qualitative standards on TTS contained in apparatus unless entities subject to the emergency information requirements adopted herein pursuant to section 202 of the CVAA rely on TTS in apparatus to meet their obligations. For example, a cable operator might rely on TTS capability in the set-top box to convert emergency text into aural format. In such situations, the qualitative standards for TTS set forth in revised § 79.2 of our rules will apply to an entity's use of the TTS capability in the apparatus. This approach is supported by the fact that it is the entities subject to § 79.2 of our rules who are obligated to create the aural version of the emergency information, and not the apparatus.

provision of “video description signals, and emergency information (as that term is defined in [§ 79.2 of this Part]) such that viewers are able to activate and deactivate the . . . video description as the video programming is played back on a picture screen of any size.”<sup>56</sup> In the *NPRM*, the Commission asked what specifically it should require of recording devices to “enable the rendering or the pass through of” video description and emergency information. In compliance with the statutory directive, we require that recording devices store the secondary audio stream along with the recorded video, such that a consumer may switch between the main program audio and the secondary audio stream when viewing recorded video programming. The fact that most modern recording devices already record programming with the secondary audio stream demonstrates that this requirement is not burdensome, and that more specific standards are not currently needed.<sup>57</sup> ACB states that the Commission “should require manufacturers who develop devices which record video programming to record the described content along with the nondescribed stream,” and “that the manufacturers must allow the user to choose whether to record the described content via accessible means.” We understand ACB’s concern to be ensuring that the secondary audio stream is accessible to consumers who record video programming. Because in modern recording devices the recording of the secondary audio stream occurs automatically, it is unnecessary to require that consumers be permitted to choose whether to record a secondary audio stream.

52. In the *NPRM*, the Commission asked how the rules relating to emergency information should apply to recording devices, given that emergency information is, by its nature, extremely time sensitive. Under the rules adopted herein, all covered apparatus must make available the secondary audio stream, which is used for both video description and emergency information; thus, there would be no practical impact if we were

to say that recording devices are not required to record and make available emergency information carried on a secondary audio stream. Although ACB would prefer that recording devices record video description instead of emergency information, we find that such an approach would not be possible given that the apparatus does not play any role in deciding the content of the secondary stream, which may contain emergency information that has overridden video description. Additionally, we find that consumers may play back recorded programming moments after it was first shown on television, and thus, emergency information may still be relevant. The Entertainment Software Association (“ESA”) notes potential harm of emergency information appearing during recorded programming because “a casual observer of recorded programming may be misled or confused by information that is no longer current or relevant.” On balance, we find that it is preferable to ensure that consumers have access to recorded emergency information that may still be relevant, rather than attempting to avoid the seemingly attenuated possibility that a casual observer may not realize that the programming is recorded and could be misled by outdated emergency information.

### 3. Customer Support Services

53. We do not at this time require MVPDs that provide set-top boxes and manufacturers of other covered apparatus to provide specific customer support services to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams to access video description and accessible emergency information, but we seek further comment on this issue. Although expressly raised in the *NPRM*, there was little comment on this issue. As in the context of customer support services pursuant to section 202 of the CVAA, AT&T argues that covered entities should have the flexibility to educate customers on the use of the secondary audio stream, and NCTA contends that additional rules in this area are unnecessary because “cable operators currently provide customer support for handling video description concerns.” Given the lack of detailed comment on this issue, we seek further comment in the *FNPRM*. While we do not prescribe specific customer service requirements on manufacturers or MVPDs at this time, we believe that manufacturers’ and MVPDs’ customer service representatives should be able to answer consumer questions about accessing the

secondary audio stream with respect to the devices each supports. Additionally, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact, as well as other information about how to seek assistance, on their Web sites and in other informational materials distributed to the public.

### 4. Interconnection Mechanisms

54. The CVAA directs the Commission to require that “interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary . . . to make encoded video description and emergency information audible.” In the *NPRM*, we sought comment on our understanding that devices already use interconnection mechanisms that make available audio provided via a secondary audio stream, and that no further steps would be needed to implement this requirement. NCTA, the only commenter that addresses this issue, states that no further steps are needed to implement this statutory provision because “[o]perator-supplied set-top boxes already use interconnection mechanisms that make available audio provided via the secondary audio stream.” We find that we need not require apparatus, including operator-supplied set-top boxes, to do more than that. In order to fulfill the interconnection mechanism provision of the CVAA and to provide clarity to the industry, however, we adopt a rule that states that covered apparatus must use interconnection mechanisms that make available the audio provided via the secondary audio stream. In doing so, it is our expectation, based on the record, that apparatus manufacturers will not need to take any additional steps to comply with this rule.

### 5. Issues From 2011 Video Description Order

55. In the *NPRM*, the Commission sought comment on three issues that arose in the 2011 video description proceeding. These issues pertain to equipment features that present challenges for video programming distributors and consumers. For the reasons discussed below, we decline to address these issues at this time, although we seek further comment on the first issue in the *FNPRM*.

56. First, the *NPRM* sought comment on whether the Commission should impose a requirement that broadcast

<sup>56</sup> Although the *NPRM* proposed rule language that would have required recording devices to “enable the rendering or the pass through of video description signals and emergency information,” we note that the term “rendering” is generally inapplicable to audio, and thus we substitute the term “presentation.”

<sup>57</sup> We disagree, however, with arguments that the Commission need not prescribe any recording device requirements because of current compliance. The CVAA directs the Commission to impose requirements on recording devices, and such requirements will ensure that devices will continue to operate as needed to comply with the statute.



receivers detect and decode tracks marked for the “visually impaired.” The issue arose in the *2011 Video Description Order*, when the Commission observed that viewers with digital television sets, as well as other viewers, may be unable to find and activate an audio stream tagged as “visually impaired” (“VI”), which is the tag used for video description as dictated by the digital television standard, which is known as the ATSC standard.<sup>58</sup> The Commission also cited comments indicating that many legacy televisions may be compatible only with audio streams tagged as “complete main” (“CM”). Further, it has been reported that some television receivers do not properly handle two audio tracks if they are both identified as “English,” and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description. As a result of the tagging issues described above, consumers may find it difficult to identify and select audio streams containing video description. In the 2011 video description proceeding, the Commission decided that this issue would be better addressed in a later proceeding. CEA and NAB argue that we should not address the issue of tagging and decoding of secondary audio streams in this proceeding, particularly given the statutory deadlines imposed by the CVAA. We recognize that this is an important issue, but we also recognize that we currently lack a detailed record on these very technical matters. Accordingly, we seek comment on this issue in the *FNPRM*. In the interim we expect local broadcasters to coordinate with manufacturers to ensure that consumers can easily access video description and emergency information provided on a secondary audio stream, and we expect voluntary standards setting bodies to explore how best to impose a consistent tagging scheme.

57. Second, the *NPRM* sought input on the comment of Dolby Laboratories, Inc. in the 2011 video description proceeding that the audio experience for individuals accessing video-described programming could be enhanced if devices supported a “receiver-mix” technology that would enable the device to combine the full surround sound main audio with video description. Commenters specifically object to the

“receiver-mix” proposal, claiming that it is inconsistent with the current digital television standard and has been considered and rejected by the industry. Further, CEA and NAB explain that we should not address the “receiver-mix” issue in this proceeding, particularly given the statutory deadlines imposed by the CVAA.<sup>59</sup> We agree, and thus we do not address this issue here.

58. Third, the *NPRM* asked if and how the Commission should address equipment limitations that may discourage video programming distributors from providing more than one additional audio channel. In the *2011 Video Description Order*, the Commission noted that such limitations may prevent some viewers from accessing a third audio channel, even if a video programming distributor provides such a channel. CEA and NAB explain that we should not address these equipment limitations in this proceeding, particularly given the statutory deadlines imposed by the CVAA.<sup>60</sup> We agree that we should not at this time address equipment limitations that may prevent consumers from accessing a third audio channel. In the *NPRM*, the Commission asked specifically whether it should address this problem by mandating compliance with what is known as “CEA–CEB21,” *Recommended Practice for Selection and Presentation of DTV Audio*, a bulletin that “provides recommendations to manufacturers to facilitate user setup of audio features in the receiver without professional assistance.” CEA explains that CEA–CEB21 is a recommended practice with no normative requirements, and that it is not designed for use as a rule for which compliance is enforced. Accordingly, we do not impose CEA–CEB21 as a required compliance standard. We expect the industry to continue its work to develop products that are capable of delivering multiple ancillary audio streams.

#### *B. Apparatus Subject to Section 203 of the CVAA*

##### **1. General Scope of the Apparatus Requirements**

59. The rules adopted in this proceeding pursuant to section 203 of the CVAA apply only to apparatus designed to receive, play back, or record

video programming provided by the entities subject to our existing emergency information rules (as set forth in § 79.2) and our existing video description rules (as set forth in § 79.3).<sup>61</sup> In the *NPRM*, the Commission proposed to apply the video description and emergency information requirements adopted pursuant to section 203 of the CVAA only to apparatus designed to receive, play back, or record “television broadcast services or MVPD services.” Several commenters support the proposal to limit the apparatus requirements adopted herein to apparatus designed to receive, play back, or record television broadcast services or MVPD services. Consumer Groups, however, point out that the CVAA directs the Commission to impose emergency information requirements on video programming providers and distributors as defined in § 79.1 of its rules, which includes more than just broadcasters and MVPDs. Upon further consideration, we find no basis to deviate from our existing definition, and we agree with the Consumer Groups that we should not exclude from coverage video programming provided by the third category of video programming distributors, which is “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.” We thus conclude that it is more appropriate to extend the rules adopted in this proceeding pursuant to section 203 of the CVAA to apparatus designed to receive, play back, or record video programming provided by broadcasters, MVPDs, and “any other distributor of video programming for residential reception that delivers such programming directly to the home and

<sup>61</sup> See 47 CFR 79.2, 79.3. Both rules apply to television broadcast stations, MVPDs, 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.” See *id.* 79.1(a)(2), 79.2(a)(1), 79.3(a)(5). Although §§ 79.2 and 79.3 impose requirements on covered entities, we find it more useful in some instances to discuss the scope of the rules in terms of the *video programming* provided by covered entities, as it is such programming that must be provided aurally. We clarify that at this time, the apparatus requirements adopted herein are not triggered by an apparatus receiving, playing back, or recording video programming available for viewing on an Internet Web site, even if such programming is provided by a covered entity. We also clarify that at this time, the apparatus requirements adopted herein do not apply to mobile devices that do not include receivers used to access television broadcast or MVPD services. The *FNPRM* poses additional questions about applicability of the requirements adopted herein to mobile devices. As explained herein, the apparatus requirements adopted herein apply to mobile DTV apparatus.

<sup>58</sup> See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 76 FR 55585 (2011) (“*2011 Video Description Order*”). A tag, in this context, refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.

<sup>59</sup> Some commenters also discuss the issue of making surround sound available on the secondary audio stream. One commenter supports such a requirement. Others explain that capacity constraints would lead to difficulty in providing two full surround sound audio streams.

<sup>60</sup> Other commenters also object to Commission-mandated technical standards with respect to the provision of multiple audio services.

is subject to the jurisdiction of the Commission.”

60. We disagree with Consumer Groups’ contention that the apparatus rules should apply as broadly here as they did in the IP closed captioning proceeding.<sup>62</sup> We note that the CVAA does not define the term “apparatus.” Thus, we must give meaning to the term in a manner that best effectuates the intent of Congress and the purposes of the statute. We recognize that the CVAA’s legislative history indicated Congress’ intent to “ensure[ ] that devices consumers use to view video programming are able to . . . decode, and make available the transmission of video description services, and decode and make available emergency information.” However, given the current scope of §§ 79.2 and 79.3 of our rules, we decline at this time to adopt rules to encompass apparatus that are not designed to receive, play back, or record video programming provided by entities subject to our existing emergency information and video description rules. Such a limitation is reasonable because it ensures that consumers are able to use apparatus to access a secondary audio stream that relays programming that includes emergency information and video description yet, at the same time, ensures that we avoid placing undue and unnecessary burdens on industry. Accordingly, the apparatus requirements adopted herein are triggered only when the apparatus is designed to receive, play back, or record video programming that is subject to §§ 79.2 and 79.3 of our rules, *i.e.*, video programming provided by entities subject to those rules.<sup>63</sup>

<sup>62</sup> We find unpersuasive Consumer Groups’ claim that “the fact that programming is not required to be made accessible under [s]ection 202 or other law does not excuse apparatus manufacturers from their obligations to render accessibility information pursuant to [s]ection 203(a).” Consumer Groups cite specifically to the Commission’s decision in the *IP Closed Captioning Order* to extend the apparatus requirements to DVD players, even though the DVDs themselves may not be required to include captions. 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, 77 FR 46632 (2012) (“*IP Closed Captioning Order*”). In the *IP Closed Captioning Order*, the Commission explained that the CVAA explicitly required coverage of apparatus that play back, but do not receive, video programming transmitted simultaneously with sound, such as DVD players.

<sup>63</sup> The Wireless RERC requests that the Commission investigate, via Public Notice or Notice of Inquiry, the technical feasibility of providing aural and visual emergency information on live IP-delivered video programming, including methods for identifying whether the viewing apparatus is within the geographic location of the emergency situation. CTIA-The Wireless Association (“CTIA”)

61. We interpret the term “apparatus” to include the physical devices designed to receive, play back, or record video programming transmitted simultaneously with sound, as well as software integrated in those covered devices. The *NPRM* proposed to define apparatus subject to the emergency information and video description requirements to include “the physical device and the video players that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players that manufacturers direct consumers to install after sale.” As in its petition for reconsideration of the *IP Closed Captioning Order*, CEA argues that we should use the term “video programming player” in lieu of the term “video player” because the inclusion of “video players” in the definition of “apparatus” exceeds the scope of section 203 of the CVAA by failing to limit its scope to video players designed to receive or play back “video programming,” as that term is defined in the CVAA.<sup>64</sup> We find that, substituting the term “video programming player” for “video player,” as CEA requests, would not appear to provide any further clarity, as we are not aware of any commonly accepted definition of “video programming player.”<sup>65</sup> Nonetheless, to address CEA’s argument that our rules should not reach apparatus that only display video that does not constitute “video programming,” and to make the language of the rules more consistent with the statute, we revise the proposal in the *NPRM* by replacing references to “video players” with “video player(s) capable of displaying video programming transmitted simultaneously with sound.”<sup>66</sup> We

responds that the Wireless RERC’s proposal that the Commission investigate and require the inclusion of emergency information in live, IP-delivered video programming is beyond the scope of the CVAA.

<sup>64</sup> The CVAA defines “video programming” as “programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media.” 47 U.S.C. 613(h)(2).

<sup>65</sup> We note that in another proceeding, CEA has proposed that we define “video programming player” as “a component, application, or system that is specifically intended by the manufacturer to enable access to video programming, not video in general.” See Petition for Reconsideration of the Consumer Electronics Association, MB Docket No. 11–154, at 8 (filed Apr. 30, 2012) (“CEA Recon. Petition”). The definition relies upon a consideration of the manufacturers’ intent, which we find to be inappropriate here, as discussed below, since it would allow a manufacturer unilaterally to decide whether an apparatus falls within the scope of the rules.

<sup>66</sup> As in the *IP Closed Captioning Order*, the apparatus rules adopted herein cover manufacturer-

believe that by limiting the scope of our rules to video players that are capable of displaying “video programming transmitted simultaneously with sound,” we will address CEA’s fundamental concern that our definition of “apparatus” should be consistent with the CVAA.

## 2. Interpretation of Statutory Terms Incorporated in the Commission’s Apparatus Requirements

62. Below we interpret certain statutory terms incorporated in the Commission’s apparatus requirements. Each of these interpretations is adopted as proposed in the *NPRM*, and each is consistent with the approach taken in the *IP Closed Captioning Order*.

63. *Designed to Receive, Play Back, or Record Video Programming.* Under the CVAA, the emergency information and video description requirements apply to “apparatus designed to receive or play back video programming transmitted simultaneously with sound,” and to “apparatus designed to record video programming transmitted simultaneously with sound.” In the *NPRM*, we proposed to consider an apparatus to be “designed to” receive, play back, or record video programming transmitted simultaneously with sound if it is sold with, or updated by the manufacturer to add, an integrated video player capable of displaying video programming. We adopt our proposed definition of “designed to.” In determining whether a device falls within this definition, we will look to the functionality of the device (*i.e.*, whether it is capable of receiving or playing back video programming), rather than the subjective intent of the manufacturer (*i.e.*, the manufacturer’s intent when it designed the apparatus), to determine if the device is designed to receive, play back, or record video programming. CEA argues here, as in its petition for reconsideration of the *IP Closed Captioning Order*, that the Commission instead should consider the manufacturer’s intent in determining what an apparatus was “designed to” accomplish. We disagree, because such an approach would allow the manufacturer unilaterally to dictate whether an apparatus falls within the

provided updates and upgrades to devices; thus, a device that originally did not include a video player capable of displaying video programming transmitted simultaneously with sound, but that the manufacturer requires the consumer to update or upgrade to enable video reception or play-back, will be covered by our rules, and our rules equally cover updates or upgrades to existing video players. We would not, however, hold manufacturers liable for failure to comply with the apparatus requirements adopted herein for devices manipulated or modified by consumers in the aftermarket.

scope of the rules, which could harm consumers by making compliance with the apparatus emergency information and video description requirements effectively voluntary. As the Commission stated in the *IP Closed Captioning Order*, we are persuaded that adopting a bright-line standard based on the device's capability will provide more certainty for manufacturers.

64. *Uses a picture screen of any size.* Section 203 of the CVAA applies to apparatus designed to receive or play back video programming "if such apparatus . . . uses a picture screen of any size." In the *NPRM*, we proposed interpreting this phrase to mean that the apparatus works in conjunction with a picture screen, which is the approach that the Commission adopted in the *IP Closed Captioning Order* regarding the same statutory provision. We consider an apparatus to *use* a picture screen of any size if the apparatus works in conjunction with a picture screen. Thus, apparatus that "use[] a picture screen of any size" include not only devices that have a built-in screen, but also devices that are designed to work in conjunction with a screen, such as set-top boxes, game consoles, personal computers, and other receiving or play back devices separated from a screen.

65. *Technically feasible.* The requirements of section 203 of the CVAA pertaining to apparatus designed to receive or play back video programming apply only to the extent they are "technically feasible." In the *NPRM*, we proposed to consider compliance with the apparatus requirements to be technically infeasible if a manufacturer shows that changes to the design of the apparatus to incorporate the required capabilities are not physically or technically possible. We further proposed that it would not be sufficient to show that compliance is merely difficult. These proposals mirrored the approach adopted in the *IP closed captioning* context. As explained in that context, because neither the statute nor the legislative history provides guidance as to the meaning of "technical feasibility," the Commission is obligated to interpret the term to best effectuate the purpose of the statute. In the *IP Closed Captioning Order*, the Commission looked to prior Commission interpretations of the phrase "technically feasible" and other similar terms in the context of accessibility for people with disabilities, which similarly relied on whether

incorporation of the capability was physically and technically possible. Commenters did not discuss this issue, and we see no reason to deviate from the reasoned approach adopted in the *IP Closed Captioning Order* to the same statutory provision. Accordingly, we adopt the proposed interpretation of the meaning of "technically feasible." Given our understanding that most covered apparatus already make secondary audio streams available today, we expect that covered apparatus will only rarely be able to demonstrate that it would be physically or technically impossible to change the design of the apparatus to incorporate the required capabilities. Consistent with the *IP Closed Captioning Order*, we permit parties to raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or to file a request for a ruling under § 1.41 of the Commission's rules as to technical infeasibility *before* manufacturing or importing the product.

66. *Achievability.* Section 203 provides that apparatus "that use a picture screen that is less than 13 inches in size" must meet the requirements of that section only if "achievable," as that word is defined in section 716 of the Communications Act. Section 203 also provides that "apparatus designed to record video programming transmitted simultaneously with sound" are only required to comply with the emergency information and video description requirements "if achievable (as defined in section 716)." <sup>67</sup> Section 716 of the Communications Act defines "achievable" as "with reasonable effort or expense, as determined by the Commission," and it directs the Commission to consider the following factors in determining whether the requirements of a provision are achievable: "(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question. (2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies. (3) The type of operations of the manufacturer

or provider. (4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points."

67. In the *NPRM*, we proposed a flexible approach to achievability, consistent with that adopted in the *IP Closed Captioning Order* and in the *ACS Order*, pursuant to which a manufacturer may raise achievability as a defense to a complaint alleging a violation of section 203, or it may seek a determination of achievability from the Commission *before* manufacturing or importing the apparatus. We also proposed to model the scope of the achievability exception on the *IP Closed Captioning Order*. The only commenter that provides a substantive discussion of achievability urges the Commission to provide manufacturers maximum flexibility in meeting the requirements of the CVAA, and to consider only the four statutory factors in making a determination of achievability. As in the *IP Closed Captioning Order* and the *ACS Order*, we find that it is appropriate to weigh each of the four statutory factors equally, and that achievability should be evaluated on a case-by-case basis. When faced with a complaint for a violation of the requirements adopted herein pursuant to section 203 of the CVAA, a manufacturer may raise as a defense that a particular apparatus does not comply with the rules because compliance was not achievable under the statutory factors. Alternatively, a manufacturer may seek a determination from the Commission that compliance with all of our rules is not achievable *before* manufacturing or importing the apparatus. In evaluating evidence offered to prove that compliance is not achievable, we will be informed by the analysis in the *ACS Order*, in which the Commission provided a detailed explanation of each of the four statutory factors. We remind parties that the achievability limitation is applicable only with regard to apparatus using screens less than 13 inches in size and to recording devices.

68. *Purpose-Based Waivers.* As we proposed in the *NPRM*, we will address on a case-by-case basis any requests for waivers of the requirements adopted herein for apparatus designed to receive or play back video programming. Section 203 of the CVAA permits the Commission to waive the section 203 requirements for any apparatus or class of apparatus that is "primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound," or "for equipment designed for

<sup>67</sup> As in the *IP Closed Captioning Order*, here "we expect identifying apparatus designed to record to be straightforward," and "when devices such as DVD, Blu-ray, and other removable media recording devices are capable of recording video programming, they also qualify as recording devices under [s]ection 203(b) and therefore" are subject to the requirements that the CVAA imposes on recording devices.

multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.” The CVAA does not define “primarily designed,” nor does it define “essential utility” except to state that it may be derived from more than one purpose. According to the legislative history of the CVAA, a waiver pursuant to the “primarily designed” provision is available “where, for instance, a consumer typically purchases a product for a primary purpose other than viewing video programming, and access to such programming is provided on an incidental basis.” We received little comment on purpose-based waivers. We will address any requests for waiver of the apparatus requirements adopted herein on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device. We expect that over time, Commission precedent in this area will prove instructive to both manufacturers and consumers. As in the *ACS Order*, our evaluation of requests for a purpose-based waiver also will involve consideration of the Commission’s general waiver standard, which requires good cause and a showing that particular facts make compliance inconsistent with the public interest. We find that this approach is particularly appropriate here, where waiver requests may impact accessibility and in particular accessibility of emergency information. Although we do not intend to prejudge any waiver requests that we might receive, we will consider the strong public interest in accessible emergency information when evaluating a manufacturer’s request for waiver of compliance with the requirements adopted in this proceeding.<sup>68</sup>

### 3. Application of the Apparatus Requirements to Certain Categories of Apparatus

69. Below we explain the application of the apparatus requirements adopted herein to certain categories of apparatus. Application of the requirements to each category of apparatus is adopted as proposed in the *NPRM*, and each is consistent with the approach taken in the *IP Closed Captioning Order*.

70. *Removable media players.* We adopt our proposal in the *NPRM* not to exclude removable media play back apparatus, such as DVD and Blu-ray

players, from the scope of the new requirements. Consumer Groups support the coverage of removable media play back apparatus, which they maintain would be consistent with the CVAA and the *IP Closed Captioning Order*. Based on the record, we believe that imposing emergency information and video description requirements on removable media players will require only minimal, if any, action on the part of manufacturers, because most removable media players, such as DVD and Blu-ray players, already support the secondary audio stream that the rules adopted herein require them to support. Additionally, the apparatus rules adopted herein focus on the availability of the secondary audio stream, and the apparatus itself is agnostic as to the content of that stream. That is, an apparatus will carry the stream regardless of whether that stream contains video description, emergency information, or something else. CEA argues that we should interpret the CVAA not to apply to removable media players the apparatus rules adopted herein. Specifically, CEA asserts that the CVAA applies to apparatus designed to receive, play back, or record video programming “transmitted simultaneously with sound,” and that the term “transmitted” describes “how a signal is conveyed or sent over a distance via wire or radio between two different devices or parties,” which would exclude from coverage removable media players. We disagree with CEA’s interpretation of the term “transmitted.” Instead we reaffirm our interpretation in the *IP Closed Captioning Order* that the term “apparatus” covers devices that receive, play back, or record video programming “transmitted simultaneously with sound,” where “transmitted” describes how the video programming is conveyed from the device (e.g., DVD player) to the end user (simultaneously with sound). We further note that, although the CVAA and the Commission’s rules do not require removable media itself to contain emergency information and video description,<sup>69</sup> the fact that an increasing number of DVDs contain video description further demonstrates the merit in requiring removable media players to facilitate the secondary audio

stream on which the video description is provided.<sup>70</sup>

71. *Professional and commercial equipment.* We adopt our proposal to exclude commercial video equipment, including professional movie theater projectors and similar types of professional equipment, from the section 203 rules adopted herein. Notably, no commenter objects to this proposal. Congress intended the Commission’s regulations to cover apparatus that are used by consumers. Because a typical consumer would not view video programming via professional or commercial equipment, such equipment is beyond the scope of section 203’s accessibility requirements discussed herein. We note, however, that other federal laws may impose accessibility obligations to ensure that professional or commercial equipment is accessible to employees with disabilities<sup>71</sup> or enables the delivery of accessible services.<sup>72</sup>

72. *Display-only monitors.* Section 203 of the CVAA provides that “any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements [of section 303(u)(1)].” We find that the exemption for display-only video monitors is self-explanatory and thus we incorporate the language of the statutory provision directly into our rules. We also provide that a manufacturer may make a request for a Commission determination as to whether its apparatus qualifies for this

<sup>70</sup> We note that the *NPRM* sought comment on whether we should require only video description, and not emergency information, to be accessible via removable media players. We find that it is unnecessary for us to distinguish between video description and emergency information requirements with respect to the secondary audio capabilities of apparatus, including removable media players, because it makes no difference to the apparatus capabilities whether the stream contains emergency information or video description. Further, not all emergency information needs to be viewed immediately to be of any use, for example, emergency information about a severe storm may include information about shelter locations that may remain relevant for a number of days. We find that the consumer will know that he or she is watching programming on a removable media player after its initial airing, and should be able to make a determination as to whether any steps are needed in response to recorded emergency information, thus mitigating any harm resulting from the provision of emergency information via removable media players.

<sup>71</sup> Title I of the ADA requires private and state and local government employers with more than 15 employees to provide reasonable accommodations to applicants and employees with disabilities. See 42 U.S.C. 12111 through 12117. A similar obligation applies to the federal government with respect to all federal employees with disabilities under section 501 of the Rehabilitation Act. 29 U.S.C. 791.

<sup>72</sup> See, for example, Part A of Title II and Title III of the ADA. 42 U.S.C. 12131 through 12134, 12181 through 12189.

<sup>68</sup> We note that one consumer commenter objects to any waivers based on primary purpose or essential utility. We reject this argument because these waivers are statutorily-based.

<sup>69</sup> When multimedia, including video programming, is used for the provision of services covered by other disability law, such as educational services, the covered entity must ensure that those services are accessible. See generally 42 U.S.C. 12181 through 12189 (Title III of the ADA). See also <http://www.dcmp.org> (under a grant from the U.S. Department of Education, the Described and Captioned Media Program describes and captions multimedia for use by K–12 students).

exemption. We note that no commenters address this issue. A manufacturer may make a request for a Commission determination as to whether its device qualifies for the display-only monitor exemption pursuant to § 1.41 of the Commission's rules.

73. *Mobile DTV*. We find that the apparatus requirements adopted herein apply to mobile DTV apparatus because such apparatus make available video programming through mobile DTV services, which are provided by television broadcast stations subject to §§ 79.2 and 79.3 of our rules. NAB does not dispute that the apparatus requirements apply to mobile DTV apparatus; however, it argues that the Commission "should not dictate transmission standards in the rapidly evolving mobile environment," but instead "should afford flexibility to ensure that program originators and equipment manufacturers are able to decode and integrate additional audio information." We are concerned that allowing mobile DTV broadcasters to provide aural emergency information by means other than the secondary audio stream would not be effective because manufacturers may not include functionality for an alternate approach in their apparatus, and thus emergency information may be inaccessible to consumers. Additionally, we note that the few mobile DTV devices currently on the market already support multiple audio streams. This demonstrates that support of the secondary audio stream is technically possible and may be the most appropriate means of providing emergency information and video description on mobile DTV apparatus. While we apply the same video description and emergency information requirements to mobile DTV apparatus as to other covered apparatus, to the extent that broadcasters find it preferable to use something besides a secondary audio stream to provide emergency information via mobile DTV, the Commission may consider waiver requests if supported by both broadcasters and manufacturers.

#### C. Alternate Means of Compliance

74. We implement a similar approach to alternate means of compliance to the approach we adopted in the *IP Closed Captioning Order*. Pursuant to section 203 of the CVAA, an entity may meet the emergency information and video description requirements "through alternate means than those" adopted herein. In the *NPRM*, we sought comment on our proposal to implement the same approach to alternate means of compliance that we adopted in the *IP*

*Closed Captioning Order*, and we asked whether we should instead impose certain standards that any permissible alternate means must meet, given the nature of emergency information. We received very little comment on our implementation of this provision. As proposed in the *NPRM*, we adopt a similar approach to the one adopted in the *IP Closed Captioning Order*, i.e., rather than specifying what may constitute a permissible alternate means, we will address specific requests from parties subject to the new rules on a case-by-case basis. Unlike the approach taken in the *IP Closed Captioning Order*, however, we will only permit an entity that seeks to use an "alternate means" to comply with the apparatus requirements adopted herein to request a Commission determination that the proposed alternate means satisfies the statutory requirements through a request pursuant to § 1.41 of our rules. We will not permit an entity to claim in defense to a complaint or enforcement action that the Commission should determine that the party's actions were a permissible alternate means of compliance. We find that this is the best approach, given the uniquely heightened public interest in emergency information, and the importance of ensuring that consumers know how they can use their apparatus to obtain emergency information provided via the secondary audio stream. Moreover, we believe few manufacturers should need to avail themselves of alternate means of compliance because most covered apparatus already make secondary audio streams available today. We also believe that the burden, if any, on such manufacturers is outweighed by the uniquely heightened public interest in emergency information, and that it will be beneficial to manufacturers to know in advance, before manufacturing a product, that their product will comply with Commission requirements.

#### D. Compliance Deadlines

75. We conclude that two years from the date of **Federal Register** publication is the appropriate deadline by which device manufacturers must comply with the emergency information and video description requirements of section 203 of the CVAA, as implemented herein. The CVAA does not specify the time frame by which the section 203 requirements must become effective, nor did the VPAAC recommend a compliance deadline. The *NPRM* sought comment on an appropriate deadline and we received comments from ACB and some industry commenters on this issue. While ACB supports a

compliance deadline of no more than 18 months, there is widespread industry support for a deadline of two years from the date of **Federal Register** publication. The secondary audio stream is currently used for video description, and pursuant to this *Report and Order* it will be used for aural emergency information as well. Because televisions and navigation devices have long included the ability to access secondary audio streams, we do not expect any further action will need to be taken by manufacturers of most apparatus subject to the rules to come into compliance. We find that a two-year compliance deadline is nevertheless appropriate, as it will coincide with the section 202 emergency information deadline discussed above, and it is logical to require the use of the secondary audio stream to provide emergency information by the same date that the apparatus requirements pertaining to the secondary audio stream become effective. A two-year compliance deadline is also consistent with the precedent from the Commission's implementation of other recent apparatus requirements, which were based upon the time generally needed to implement apparatus modifications.

76. We clarify that the compliance deadline refers only to the date of manufacture. In its petition for reconsideration of the *IP Closed Captioning Order*, CEA requests that the deadline for compliance with the IP closed captioning rules should be interpreted to refer only to the date of manufacture. In the present proceeding, CEA similarly argues that the Commission should add explanatory notes to §§ 79.105(a) and 79.106(a) stating that the new obligations in those provisions "place no restriction on the importing, shipping or sale of apparatus that were manufactured before" the deadline for compliance with the apparatus requirements for emergency information and video description. We find that this approach would be consistent with the Commission's past practices regarding similar equipment deadlines. The Consumer Groups assert that the proposal to consider only the date of manufacture risks consumer confusion because consumers would not know whether the products they purchase are accessible. We find that a compliance deadline based on the date of importation or the date of sale would be inappropriate, given that the manufacturer often does not control the date of importation or sale. Further, because of the brief intervals between the date of manufacture and the date of importation, a labeling requirement to

address such situations would impose compliance costs with little practical benefit. For these reasons, we add explanatory notes to §§ 79.105(a) and 79.106(a) of our rules to clarify that those rules place no restrictions on the importing, shipping, or sale of apparatus that were manufactured before the compliance deadline.

#### E. Complaint Procedures

77. We adopt the procedures proposed in the *NPRM* for the filing of complaints alleging violations of the Commission's rules requiring apparatus designed to receive, play back, or record video programming to make available emergency information and video description services.<sup>73</sup> As proposed in the *NPRM* and consistent with the apparatus complaint procedures adopted in the *IP Closed Captioning Order*, complaints alleging a violation of the apparatus rules related to emergency information and video description should include: (a) The name, postal address, and other contact information, such as telephone number or email address, of the complainant; (b) the name and contact information, such as postal address, of the apparatus manufacturer or provider;<sup>74</sup> (c) information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information; (d) the date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information; (e) a statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules; (f) the specific relief or satisfaction sought by the complainant; and (g) the complainant's preferred format or method of response to the complaint. A complaint alleging a violation of the section 203 apparatus requirements adopted herein may be

<sup>73</sup> The record contains little discussion of the proposed apparatus complaint procedures, and we see no reason to deviate from the procedures proposed in the *NPRM*. We reject Verizon's proposal that, if the Commission believes an informal complaint process is necessary, it should require complainants to confirm that they first attempted to resolve the matter directly with the manufacturer or provider. We did not adopt such a requirement in the *IP Closed Captioning Order*, also implementing section 203 of the CVAA, and we see no need to do so here, where consumers may have difficulty identifying the manufacturer or provider.

<sup>74</sup> We do not expect consumers to locate the names and addresses of manufacturers in all instances. For example, if a consumer uses a set-top box provided by its MVPD, then the consumer may indicate the MVPD's name and contact information.

transmitted to the Consumer and Governmental Affairs Bureau<sup>75</sup> by any reasonable means, such as the Commission's online informal complaint filing system,<sup>76</sup> letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted herein will be blind or visually impaired, we also note that, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer.

78. The Commission will forward complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved. The Commission may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or to adjudicate potential violations of Commission rules. After the apparatus rules adopted in this *Report and Order* become effective, the Consumer and Governmental Affairs Bureau will release a consumer advisory with instructions on how to file complaints in various formats, including via the Commission's Web site.<sup>77</sup>

#### V. Procedural Matters

##### A. Final Regulatory Flexibility Analysis

79. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),<sup>78</sup> an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed*

<sup>75</sup> The Consumer and Governmental Affairs Bureau reserves the discretion to refer complaints that reveal a pattern of noncompliance to the Commission's Enforcement Bureau.

<sup>76</sup> Kelly Pierce asserts that the word limit for electronically filed consumer complaints is "completely inadequate." Although this issue is outside the scope of this proceeding, we take note of it and will consider its merits in future updates to the electronic consumer complaint system.

<sup>77</sup> As it did in the *IP Closed Captioning Order*, the Commission further directs the Consumer and Governmental Affairs Bureau to revise the existing complaint form for disability access complaints (Form 2000C) in accordance with this *Report and Order*, to facilitate the filing of complaints alleging violations of the apparatus requirements adopted herein. Should the apparatus rules adopted in this *Report and Order* become effective before the revised Form 2000C is available to consumers, apparatus complaints may be filed in the interim by any reasonable means, as explained above.

<sup>78</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Public Law 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

*Rulemaking* in this proceeding.<sup>79</sup> The Federal Communications Commission ("Commission") sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.<sup>80</sup>

##### 1. Need for, and Objectives of, the Report and Order

80. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"), the *Report and Order* adopts rules requiring that emergency information provided in video programming be made accessible to individuals who are blind or visually impaired and that certain apparatus be capable of delivering video description and emergency information to those individuals. 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. The *Report and Order* implements this mandate by 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, for example, in an on-screen crawl. This requirement, which has widespread industry support, will serve the public interest by ensuring that televised emergency information is accessible to individuals who are blind or visually impaired. Further, as directed by section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description services and accessible emergency information. Specifically, the apparatus rules require that certain apparatus make available the secondary audio stream, which is currently used to provide video description and which will be used to provide aural emergency information. The apparatus requirements will benefit individuals who are blind or visually impaired by ensuring that apparatus on which consumers receive, play back, or record video programming are capable of accessing emergency information and

<sup>79</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*, Notice of Proposed Rulemaking, 77 FR 70970 (2012) ("NPRM").

<sup>80</sup> See 5 U.S.C. 604.

video description services. We understand that most apparatus subject to the rules already comply with these requirements.

81. As discussed in Section III of the *Report and Order*, we adopt emergency information requirements for video programming distributors, video programming providers, and program owners pursuant to section 202(a) of the CVAA. Specifically, we adopt rules that will:

- Clarify that the new emergency information requirements apply to video programming provided by entities that are covered by § 79.2 of the Commission's rules—i.e., broadcasters, MVPDs, 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;

- Require that covered entities make an aural presentation of emergency information that is provided visually in non-newscast programming available on a secondary audio stream;

- Continue to require the use of an aural tone to precede emergency information on the main program audio, and now also require use of the aural tone to precede emergency information on the secondary audio stream;

- Permit, but do not require, the use of text-to-speech (“TTS”) technologies as a method for providing an aural rendition of emergency information, and impose qualitative requirements if TTS is used;

- Require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full;

- Require that emergency information supersede all other programming on the secondary audio stream;

- Decline to make any substantive revisions to the current definition of emergency information, but clarify that severe thunderstorms and other severe weather events are included within the current definition;

- Revise the emergency information rule, as required by the statute, to include video programming providers (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors, and to allocate responsibilities among covered entities;

- Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the emergency information rules adopted in the *Report and Order*; and

- Grant waivers to The Weather Channel, LLC (“The Weather Channel”) and DIRECTV, LLC (“DIRECTV”) to provide them with additional time and flexibility to come into compliance with the rules adopted herein with regard to the provision of local weather alerts during The Weather Channel's programming via devices that are not currently capable of providing aural emergency information on a secondary audio stream.

82. As discussed in Section IV of the *Report and Order*, we adopt apparatus requirements for emergency information and video description pursuant to section 203 of the CVAA. Specifically, we adopt rules that will:

- Require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available, because such streams are the existing mechanism for providing video description and the new mechanism for making emergency information accessible;

- Decline at this time to adopt specific performance and display standards or policies addressing certain issues from the 2011 video description proceeding;

- Permit, but do not require, covered apparatus to contain TTS capability;

- Limit applicability of the apparatus requirements, at this time, to apparatus designed to receive, play back, or record video programming provided by entities subject to §§ 79.2 and 79.3 of our rules;

- Apply the apparatus requirements to removable media players, but not to professional and commercial equipment or display-only monitors;

- Find that the apparatus requirements adopted in the *Report and Order* apply to mobile digital television (“mobile DTV”) apparatus because such apparatus make available mobile DTV services, which are provided by television broadcast stations subject to §§ 79.2 and 79.3 of our rules;

- Implement the statutory provision that permits alternate means of compliance;

- Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the apparatus rules adopted in the *Report and Order*; and

- Adopt procedures for complaints alleging violations of the apparatus requirements adopted in the *Report and Order*.

## 2. Legal Basis

83. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications

and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

## 3. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

84. No comments were filed in response to the IRFA.

## 4. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

85. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the *Report and Order*.<sup>81</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>82</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>83</sup> A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).<sup>84</sup>

86. *Cable Television Distribution Services*. Since 2007, these services have been defined within the broad economic census category of “Wired Telecommunications Carriers,” which is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there

<sup>81</sup> 5 U.S.C. 603(b)(3).

<sup>82</sup> *Id.* 601(6).

<sup>83</sup> *Id.* 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

<sup>84</sup> 15 U.S.C. 632.



were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

87. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

88. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

89. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$14 million or less in annual

receipts. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

90. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

91. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

92. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, "Wired Telecommunications Carriers," which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation

("EchoStar") (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

93. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts.

94. The category of "Satellite Telecommunications" "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under \$10 million or less, and 74 establishments had receipts of \$10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

95. The second category, *i.e.*, "All Other Telecommunications," comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications

establishments are small entities that might be affected by our action.

96. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers," which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

97. *Home Satellite Dish ("HSD") Service*. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

98. *Broadband Radio Service and Educational Broadband Service*. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and

Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

99. In addition, the SBA's placement of Cable Television Distribution

Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, "Wired Telecommunications Carriers" have been defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

100. *Fixed Microwave Services*. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet

defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of "Wireless Telecommunications Carriers (except Satellite)," Census data for 2007 show that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

101. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

102. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers." The SBA has developed a small business size standard for this category, which is: All such firms having \$15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year. Of that number, 462 operated with annual revenues of \$9,999,999 million dollars or less, and 197 operated with annual revenues of 10 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

103. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

104. *Incumbent Local Exchange Carriers ("LECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year.

Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

105. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

106. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having \$29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8,995 had annual receipts of \$24,999,999 or less, and 100 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard,

the majority of firms can be considered small.

107. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors." We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having \$29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of \$24,999,999 or less, and 16 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

108. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year. Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees. Thus, under that size standard, the majority of establishments can be considered small.

109. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year. Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

#### 5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

110. Certain rule changes discussed in the *Report and Order* would affect reporting, recordkeeping, or other compliance requirements. In general, the *Report and Order* satisfies the requirements of section 202(a) of the CVAA with regard to making emergency information accessible to persons who are blind or visually impaired by mandating the use of a secondary audio stream to provide the emergency information aurally and concurrently with the emergency information being conveyed visually during non-news-cast programming. The *Report and Order* also imposes certain apparatus requirements for emergency information and video description.

111. With regard to the emergency information requirements, there are certain provisions that would require covered entities to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* provides that parties may petition for waiver of these requirements for good cause pursuant to § 1.3 of the Commission's rules. DBS operators may petition for a waiver of the emergency information requirements pursuant to § 1.3 of the Commission's rules if they have insufficient spot beam capacity. The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information rules.

112. With regard to the apparatus requirements, there are certain provisions that would require covered entities to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* permits parties to raise technical infeasibility as a defense to a complaint or, alternatively, to file a request for a ruling under § 1.41 of the Commission's rules before manufacturing or importing the product. Similarly, the *Report and*

*Order* permits parties to raise achievability as a defense to a complaint alleging a violation of section 203, or to seek a determination of achievability from the Commission before manufacturing or importing the apparatus. Pursuant to the *Report and Order*, a party may request a Commission determination of whether its apparatus is an exempt display-only video monitor, may request a waiver of the requirements for mobile digital television ("mobile DTV"), and may prospectively request a purpose-based waiver, which will be addressed on a case-by-case basis. Further, a covered entity that seeks to use an "alternate means" to comply with the apparatus requirements may file a request pursuant to § 1.41 of the Commission's rules for a determination that the proposed alternate means satisfies the statutory requirements. The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information and video description apparatus rules.

#### 6. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

113. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>85</sup> The *NPRM* invited comment on issues that had the potential to have significant impact on some small entities.

114. These rules in certain instances may have a significant economic impact on some small entities. Although alternatives to minimize economic impact have been considered, we emphasize that our action is governed by the congressional mandate contained in sections 202(a) and 203 of the CVAA. Specifically, the *Report and Order* declines to adopt alternative methods to make televised emergency information accessible to blind and visually impaired persons given the overwhelming support in the record for use of a secondary audio stream to achieve accessibility. For example, the

<sup>85</sup> 5 U.S.C. 603(c)(1) through (c)(4).

Commission considered alternatives that were considered but not recommended by the Video Programming Accessibility Advisory Committee ("VPAAC"), such as: (1) including a shortened audio version of the textual emergency information on the main program audio; or (2) broadcasting a five to ten second audio message on the main program audio after the three aural tones to inform individuals who are blind or visually impaired of a means by which they can access the emergency information, such as a telephone number or radio station. According to the VPAAC, these alternatives have disadvantages, including interruption to the main program audio that could be disruptive to viewers and the need for sufficient resources to create and manage the brief audio messages, and no commenters supported these proposals. The Commission also considered other alternatives that were considered but not recommended by the VPAAC such as "dipping" or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location. The VPAAC determined that these alternatives either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems, and no commenters supported these proposals. Given the importance of providing accessible emergency information to blind and visually impaired consumers, the *Report and Order* also declines to create an exception from the requirements of the revised emergency information rule based on technical capability, but parties, including small entities, may petition for a waiver for good cause pursuant to § 1.3 of the Commission's rules. We note that many covered entities, including small entities, already provide or have the capability to pass through secondary audio streams, such that any economic impact will be minimized.

115. With regard to apparatus requirements, the *Report and Order* adopts procedures enabling the Commission to grant exemptions to the rules pursuant to section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense) or is not technically feasible. This exemption process will

allow the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. This will reduce the costs of compliance for these entities. As an additional means of reducing the costs of compliance, the *Report and Order* provides that parties may use alternate means of compliance to the rules adopted pursuant to section 203 of the CVAA. Under this approach, the Commission will permit an entity that seeks to use an "alternate means" to comply with the apparatus requirements to file a request pursuant to § 1.41 of the Commission's rules for a determination that the proposed alternate means satisfies the statutory requirements, and the Commission will consider such requests on a case-by-case basis. Individual entities, including smaller entities, may benefit from these provisions.

116. Overall, we believe we have appropriately considered both the interests of individuals who are blind and visually impaired and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to "update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming."

#### 7. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

117. None.

#### 8. Report to Congress

118. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>86</sup> In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>87</sup>

#### B. Paperwork Reduction Act

119. The *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13.<sup>88</sup> The requirements will be

<sup>86</sup> See 5 U.S.C. 801(a)(1)(A).

<sup>87</sup> See *id.* 604(b).

<sup>88</sup> Information collection requirements include:

(1) The filing and processing of complaints alleging violations of the Commission's rules pertaining to accessible emergency information, pursuant to

submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### C. Congressional Review Act

120. The Commission will send a copy of the *Report and Order* in MB Docket No. 12-107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### D. Ex Parte Rules

121. *Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other

revised § 79.2(c); (2) the filing and processing of complaints alleging violations of the Commission's apparatus requirements for emergency information and video description; (3) the filing and processing of requests for waiver of the apparatus requirements on the basis of technical feasibility, pursuant to § 79.105(a); (4) the filing and processing of requests for waiver of the apparatus requirements on the basis of achievability, pursuant to § 79.105(b)(3); (5) the filing and processing of requests for a purpose-based waiver of the apparatus requirements, pursuant to § 79.105(b)(4); and (6) the submission and review of consumer eligibility information pertaining to the waiver granted to DIRECTV with respect to the provision of aural emergency information during The Weather Channel's programming on all set-top boxes.

filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### E. Additional Information

122. For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), or Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

#### VI. Ordering Clauses

123. Accordingly, *it is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Report and Order and Further Notice of Proposed Rulemaking is adopted*, effective thirty (30) days after the date of publication in the **Federal Register**, except for §§ 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised § 79.2(c), which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rules.

124. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules are hereby amended as set forth in Appendix B.

125. *It is further ordered* that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to § 1.2 of the Commission's rules, 47 CFR 1.2, all waiver requests pursuant to §§ 1.3 or 79.105(b)(4) of the Commission's rules, 47 CFR 1.3, 79.105(b)(4), and all informal requests for Commission action pursuant to § 1.41 of the Commission's rules, 47 CFR 1.41, filed under these rules and pursuant to sections 202 and 203 of the CVAA as discussed herein.

126. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12-107, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

127. *It is further ordered* that the Commission shall send a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12-107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

#### PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.2 by revising paragraphs (b)(1) through (3), adding paragraphs (b)(4) and (5), and revising paragraph (c) to read as follows:

#### § 79.2 Accessibility of programming providing emergency information.

\* \* \* \* \*  
(b) \* \* \*

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1.

(2) Video programming distributors and video programming providers must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided visually during a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired; and

(ii) Emergency information that is provided visually during programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming, must be accompanied with an aural tone, and beginning May 26, 2015, must be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide the emergency information aurally.

Emergency information provided aurally on the secondary audio stream must be preceded by an aural tone and must be conveyed in full at least twice. Emergency information provided through use of text-to-speech ("TTS") technologies must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information. The video programming distributor or video programming provider that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone. Video programming distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers.

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

(4) Video programming distributors must ensure that emergency information does not block any closed captioning and any closed captioning does not block any emergency information

provided by means other than closed captioning.

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

(c) *Complaint procedures.* A complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor or the video programming provider against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor or the video programming provider of the complaint, and the distributor or the provider will reply to the complaint within 30 days.

■ 3. Add § 79.105 to read as follows:

**§ 79.105 Video description and emergency information accessibility requirements for all apparatus.**

(a) Effective May 26, 2015, all apparatus that is designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to §§ 79.2 and 79.3, is manufactured in the United States or imported for use in the United States, and uses a picture screen of any size, must have the capability to decode and make available the secondary audio stream if technically feasible, unless otherwise provided in this section, which will facilitate the following services:

(1) The transmission and delivery of video description services as required by § 79.3; and

(2) Emergency information (as that term is defined in § 79.2) in a manner that is accessible to individuals who are blind or visually impaired.

**Note 1 to paragraph (a):** Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale,

whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

**Note 2 to paragraph (a):** This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before May 26, 2015.

(b) *Exempt apparatus.* (1) *Display-only monitors.* Apparatus or class of apparatus that are display-only video monitors with no playback capability are not required to comply with the provisions of this section.

(2) *Professional or commercial equipment.* Apparatus or class of apparatus that are professional or commercial equipment not typically used by the public are not required to comply with the provisions of this section.

(3)(i) *Achievable.* Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the video description and emergency information requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

(ii) The petitioner or respondent must support a petition for exemption or a response to a complaint with sufficient evidence to demonstrate that compliance with the requirements of this section is not "achievable" where "achievable" means with reasonable effort or expense. The Commission will consider the following factors when determining whether the requirements of this section are not "achievable:"

(A) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(B) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(C) The type of operations of the manufacturer or provider; and

(D) The extent to which the service provider or manufacturer in question

offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(4) *Waiver.* Manufacturers of apparatus may petition the Commission for a full or partial waiver of the requirements of this section, which the Commission may grant upon a finding that the apparatus meets one of the following provisions:

(i) The apparatus is primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) The apparatus is designed for multiple purposes, capable of receiving or playing back video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(c) *Interconnection.* Covered apparatus shall use interconnection mechanisms that make available the audio provided via a secondary audio stream.

■ 4. Add § 79.106 to read as follows:

**§ 79.106 Video description and emergency information accessibility requirements for recording devices.**

(a) Effective May 26, 2015, all apparatus that is designed to record video programming transmitted simultaneously with sound that is provided by entities subject to §§ 79.2 and 79.3 and is manufactured in the United States or imported for use in the United States, must comply with the provisions of this section except that apparatus must only do so if it is achievable as defined in § 79.105(b)(3).

**Note 1 to paragraph (a):** Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

**Note 2 to paragraph (a):** This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before May 26, 2015.

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of video description signals and emergency information (as that term is defined in § 79.2) such that viewers are able to activate and de-activate the video description as the video



programming is played back on a picture screen of any size.

(c) All apparatus subject to this section must comply with the

interconnection mechanism requirements in § 79.105(c).

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