

ALERT

FCC Releases New Emergency Information and Video Description Rules

April 10, 2013

On April 9, 2013, the Federal Communications Commission (FCC or Commission) released a Report and Order (Order) and Further Notice of Proposed Rulemaking (FNPRM) implementing Sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). First, the Order mandates that video programming distributors (VPDs) and video programming providers (VPPs) which create emergency information visually and outside of newscasts present such information aurally on a secondary audio stream. Second, the Order requires apparatus which receive, play back or record video programming to make available secondary audio streams used to provide video description and accessible emergency information.

The compliance deadline for both aspects of the Order is two years after *Federal Register* publication.

Section 202 Emergency Information Rules

The Order revised the current rules to require non-newscast emergency information presented visually, such as with an on-screen crawl, to be aurally described on a secondary audio stream. The current rules require an aural tone—commonly three high-pitched tones—to alert individuals with visual disabilities of emergencies and to utilize a second source, such as a radio, to receive emergency information. The new rules continue to mandate an aural tone on the main audio stream, which now will alert individuals to switch to the secondary audio stream. The new rules also will mandate an aural tone on the secondary audio stream, followed by at least two readings of the aural presentation of the emergency information. In addition, the Order clarified that emergency information will take

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priority over all other content on the secondary audio stream.

The new rules provide flexibility in the method of aurally describing the emergency information and permit the use of text-to-speech (TTS) technology to convey the information, provided that TTS is “intelligible” and uses “the correct pronunciation of relevant information.” Also, though the aural presentation need not be a verbatim account of the visual information, it must include “the critical details of the emergency and instructions about how to respond.” Importantly, emergency information presented graphically, but not textually, such as maps or other graphic displays, must also be presented aurally in the secondary audio stream.

The Order clarified that “video programming” subject to the emergency information rules includes programming provided by licensed 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.” While the scope of “video programming” includes programming offered on Mobile DTV platforms, it does not include Internet Protocol (IP)-delivered programming or emergency alerts delivered through the Emergency Alert System (EAS).

Responsibility for providing the aural presentation of non-newscast emergency information will lie with the entity that creates the visual emergency information, whether that be a VPD or VPP. In addition, VPDs must ensure that the aural presentation is passed through to consumers on the secondary stream. Consumers may file informal complaints with the Consumer and Governmental Affairs Bureau against VPDs or VPPs, which will then have 30 days to respond.

In addition, the Order:

- Interpreted the definition of covered “emergency information” to include severe thunderstorms and severe weather events, though it did not explicitly add to the definitional examples;
- Retained the current rule requiring that emergency information presented visually during newscasts be aurally described in the main program audio, and expanded the scope of the rule to cover VPPs and program owners as responsible parties;
- Granted extensions for compliance to The Weather Channel and for DIRECTV’s provision of The Weather Channel’s programming; and
- Declined to adopt a “technical capability exception” for entities without the necessary equipment to provide a secondary audio stream and did not implement relaxed rules for small or analog cable systems. Instead, the Commission stated that entities could seek relief under the general waiver process.

Section 203 Apparatus Rules for Emergency Information and Video Description

The Order covers apparatus designed to receive, play back or record video programming transmitted simultaneously with sound by broadcasters, MVPDs or other video programming distributors subject to the FCC’s jurisdiction. Covered apparatus includes Mobile DTV apparatus, recording devices and removable

media players.

The levels of compliance for covered apparatus are similar to those under the IP Captioning rules. Covered apparatus must decode and make available secondary audio streams, if technically feasible. For apparatus with a picture screen of less than 13 inches, compliance is required if “achievable,” meaning “with reasonable effort or expense.”

Further Notice of Proposed Rulemaking

The FNPRM seeks comment on whether MVPDs should be required to comply with the new rules when they permit subscribers to access video programming over tablets, PCs and mobile devices, whether broadcast receivers should be required to detect and decode audio streams marked for the visually impaired, and whether covered entities should be required to provide customer support services and contact information to assist blind or visually impaired consumers in navigating between audio streams.

Comments on the FNPRM will be due 60 days after publication in the *Federal Register*. Reply Comments will be due 90 days after publication in the *Federal Register*.