



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434) 977-3716

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COUNTDOWN TO MAY 26, 2015, EFFECTIVE DATE OF RULE REQUIRING TELEVISION STATIONS TO VIDEO DESCRIBE EMERGENCY INFORMATION ON SAP CHANNEL

As of **May 26, 2015**—roughly five short months from now—the FCC’s new rules requiring video description (also sometimes referred to as “audio description”) of emergency information provided visually during non-newscast programming will become effective for television stations. In most cases, stations will need to acquire additional hardware and/or software to comply with the new rules. The new rules will require broadcasters who provide emergency information to viewers through visual-only means during non-news programming (for example, through an on-screen crawl) to video describe the information concurrently on a secondary audio stream (i.e., on a SAP channel). (For purposes of this memorandum, the terms “secondary audio stream” and “SAP channel” will be used interchangeably and are intended to refer to the same thing.) Below are several important aspects of the new rules that television stations should bear in mind with the May 26, 2015, effective date approaching.

Fundamental Requirement. To restate what is already stated above, the new rules will require television stations that provide emergency information to viewers through visual-only means during non-newscast programming to video describe the same emergency information concurrently on a secondary audio stream.

Video-Described Emergency Information Must Run Twice. *Video-Described Emergency Information Must Run Twice.* When emergency information is video-described on the SAP channel, it must 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.” Not surprisingly, the FCC also “encourages” stations “in appropriate circumstances and at their discretion to convey the emergency information more than twice.” The FCC believes that the “twice-plus” protocol “would be particularly appropriate during portions of the day when the secondary audio stream is silent or merely duplicates the main program audio.”

Accurate Video Description Required. The emergency information that is video described on the SAP channel does not have to be a verbatim recounting of the emergency information provided visually on the screen. However, the information presented aurally on the SAP channel must “accurately and effectively” communicate the same critical details about a current emergency and how to respond to the emergency as those that are provided visually.

TTS Is Permissible—Not Mandatory—But Must Be “Intelligible”. For purposes of converting textual emergency information (such as an on-screen crawl) to audio format for the secondary audio stream, stations will be permitted to use Text-to-Speech (“TTS”) technologies, but the rules do not make TTS mandatory. The Order adopting the new rules states that the information provided on the secondary audio stream using 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.” Stations that elect to use TTS for these purposes should begin testing the technology now to ensure that they are comfortable with TTS interpretation of some of the more unusual names that are frequently used in connection with the station’s severe weather and other emergency coverage. The Commission will entertain viewer complaints about the quality of TTS, and it is unclear how “flexible” or “understanding” the Commission will be in judging TTS accuracy in the context of a viewer complaint.

ALL Visual Presentations of Emergency Information Are Covered by the New Rules. It is critically important to understand that the new rules do not apply only to crawls during non-news programming. The new rules apply to ***any and all visual depictions of emergency information*** that air during non-news programming. Thus, for example, if, during non-news programming, a station puts a map of its viewing area in the corner of the screen and uses red color-coding to identify three counties as the affected area for a severe thunderstorm watch and superimposes the words “severe thunderstorm watch” beneath the map, then the new rules will be triggered, and the station will be required to video describe this same information on the secondary audio stream. If a station plans to rely on an automated TTS tool to convert on-air textual crawls into video description, such a tool will not satisfy the requirements for this highlighted map example because a TTS tool would not automatically “capture” the image of the highlighted counties and convert them to text in order to identify them on the SAP channel. Non-textual graphics, such as the one in this example, are likely to require human intervention for compliance with the new rules. On that point, the FCC observed in its Order that “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.”

ALL Stations Are Subject to the New Rules; There Is No “Technical Capability” Exception. Significantly, the FCC did not adopt a “technical capability” exception to these new rules. **In other words, all television stations that will, at any time, provide any “emergency information” in a visual format during non-news programming must acquire and put into operation the equipment and software necessary to make a secondary audio stream available for description of emergency alerts by the May 26, 2015, deadline.** (This is an important difference from the rules governing video description of other programming, for which there is a

“technical capability” exception.) When the FCC adopted the new rules, it acknowledged that stations are allowed to use the Commission’s normal processes to attempt to obtain a waiver of the new requirements, but it warned: “Given the importance of accessible emergency information, we do not anticipate that waivers will be routinely granted.” (Of course, for a station that *never* provides “emergency information” in a visual format during non-news programming, there would be little or no opportunity for the new rules to be implicated in the first place.)

Use of the SAP Channel Is Mandatory and There Is No Alternative Method. The FCC has specifically determined that stations must use a secondary audio stream to provide the video-described emergency information. No other method of providing the information will comply with the rules. Period. (The FCC considered several other options and also considered a more general, “flexible” approach, and the FCC rejected them all in favor of the mandatory, uniform, secondary audio stream approach.)

Stations Do Not Have to Dedicate an Audio Stream for Emergency Purposes and, Instead, Should Use the Same Audio Stream as Is Used for Regular Video Description. The new rules do not require stations to provide an audio stream that is dedicated solely to video-described emergency information. Many stations have just two audio streams—the main audio and one secondary audio stream used for video description and/or alternate language audio—but some stations have more than two audio streams. For a station with more than two audio streams, the FCC “encourages” the station “as a best practice” to make the video-described emergency information available on the same audio stream that is used to provide regular video description “because consumers who are blind or visually impaired should have more familiarity with accessing this stream.” While the FCC’s use of the terms “encourage” and “best practice” fall somewhat short of creating a “legal” requirement, it would be prudent for stations to abide by the FCC’s clearly-stated preference.

Emergency Information Must Take Priority on SAP Channel. Under the new rules, the video description of emergency information must take priority over all other content on the secondary audio stream. Thus, the video description must supersede other content on the secondary audio stream, including regular video description of programming, foreign language translation, or duplication of the main audio stream.

Definition of “Emergency Information”. For purposes of the new rules, the FCC is using the same definition of “emergency information” that is currently used in the rules relating to the visual presentation of emergency information provided aurally. When it adopted the new rules, the FCC declined to change the definition of “emergency information” from its current conception, which covers “information, 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.” According to the rules, examples of the types of emergencies that are covered include (but are not limited to):

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 changes, and warnings and watches of impending changes in weather.

When it adopted the new rules, the FCC expressly stated that it interprets the current definition to include “severe thunderstorms and other severe weather events” though it declined to add those categories to the list above.

The Special Case of School Closings for SAP Channel Purposes. In the proceeding that led to the adoption of the new rules, NAB had recommended that the FCC delete the references to “school closings” and “changes in school bus schedules” from the list of examples of emergencies. The FCC specifically rejected the NAB’s proposal. However, the new rules do provide some limited flexibility to stations with respect to handling the video description of such information on the SAP channel. When a station airs a crawl relating to school closings or bus schedules caused by an emergency during non-news programming, 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. However—and this is the flexible part of the new rules—given the potential length of information about school closings and school bus schedule changes and their potential to interfere with the video description of the regular programming, the new rules give stations 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 on the SAP channel at the conclusion of the regularly-scheduled programming, and to subsequently provide this information aurally on the secondary audio stream at the conclusion of the regularly-scheduled programming. (This limited flexibility applies *only* in the context of these new rules; it does not apply in the context of the existing emergency access rule that requires emergency information provided aurally to also be provided visually.)

EAS Alerts Are Not Required to Be Video Described on the SAP Channel, Except . . . The FCC has clearly stated that emergency information covered by the new rules “does not include emergency alerts delivered through the EAS” because EAS alerts are “already subject to separate accessibility requirements requiring the transmission of EAS attention signals and EAS messages in audio and visual formats” by television stations. Thus, when a station transmits an EAS alert relating to a severe weather condition (or any other emergency), the station will not be required under the new rules to provide video description of that EAS alert on a secondary audio stream. There is an important nuance, however, for stations that use the information obtained via EAS to generate their *own* crawl. Specifically, in the Order adopting the new rules, the FCC stated: “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 . . . outside the context of an EAS activation, it must comply with” the new video description requirements. For example, then, a station that receives a non-mandatory EAS alert and elects not to air it will still be subject to the new video description requirement if, instead of airing the EAS alert, the station uses information from the EAS alert to generate its own on-screen visual depiction of the emergency information such as a crawl or a map.

Aural Tones Are Required on Main Program Stream and Secondary Audio Stream. Under the FCC’s current emergency access rules, a station is required to air an audio tone on the main

program stream whenever the station provides a visual display of emergency information during non-news programming. The new rules maintain the existing requirement and also extend the requirement so that television stations will be required, as of May 26, 2015, to use an aural tone on the SAP channel as well, to alert the audience listening to the secondary audio stream that the regular programming audio will be interrupted for the transmission of emergency information. In other words, stations will need to use their audio emergency tone on both the main program stream and on the SAP channel.

Nature and Characteristics of the “Aural Tone”. According to the FCC, the “standard industry practice” for compliance with the aural tone requirement is to use “three high-pitched tones.” While the FCC has never issued a “sample” aural tone that would be sufficient under the rules, it would be reasonable to use a series of “three high-pitched” tones for this purpose. Other aural tones may also suffice, and the Commission has not issued any decisions evaluating any station’s aural tone.

Relative Responsibility of TV Stations and MVPDs. Video programming providers (such as television stations) and distributors (such as MVPDs) are subject to the rules according to their roles in creating and distributing the emergency information content. Specifically, the new rules require that the entity that creates the visual emergency information content and adds it to the programming stream—e.g., the television station—is responsible for providing the video description of the information on a secondary audio stream. A video programming distributor—e.g., an MVPD—is responsible for ensuring that the video description of the emergency information, including the required aural tone, is ultimately passed through to consumers.

Important Rules Require Careful, Prompt Attention to Ensure Timely Preparedness. Here we are at the end of the year, in the full throes of the holiday season. It would be easy to let this Legal Memorandum fall by the wayside, especially since the compliance deadline isn’t until the end of May 2015. Because most stations will need to acquire additional equipment and/or software solutions and develop and implement protocols to ensure compliance with the new rules, it is recommended that stations closely study these new rules without delay.

by Stephen Hartzell

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If you should have any questions concerning the information discussed in this memorandum, please let contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
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David Kushner
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Charles E. Coble
Charles F. Marshall
Stephen Hartzell
J. Benjamin Davis
Julia C. Ambrose
Elizabeth E. Spainhour
Eric M. David
Timothy G. Nelson

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