



# Virginia Association of Broadcasters Legal Review



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## UPCOMING DEADLINES

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## **EAS CAP-FORMATTING DEADLINE IS JUNE 30, 2012**

As we have reminded stations on several prior occasions, beginning June 30, 2012, all broadcasters will be required to receive and convert EAS messages in CAP format for redistribution. By that date, all EAS participants must be able to convert CAP-formatted alert messages into EAS Protocol following the conversion procedures set forth in the EAS-CAP Industry Group's Implementation Guide ("Guide"). With just a few weeks left until the effective date, broadcasters should take all necessary steps to ensure timely compliance by June 30.

To comply with the rules, all stations will need to timely acquire, install, and test the necessary CAP-compliant equipment. Typically, of course, stations will rely on equipment manufacturers to ensure that their EAS gear is compliant with these requirements—equipment manufacturers are prohibited from marketing non-compliant gear, and it goes without saying that broadcasters should not alter, reprogram, or operate the equipment in a manner that would interfere with its ability to perform the proper conversion.

The FCC initially prohibited EAS participants from using the speech-to-text functionality of their EAS gear. But as we previously reported, the FCC recently released an Order stating that stations may, in their own discretion, use the text-to-speech functionality of their EAS equipment in accordance with the Guide. A copy of the guide is available at [http://www.eas-cap.org/ECIG-CAP-to-EAS\\_Implementation\\_Guide-V1-0.pdf](http://www.eas-cap.org/ECIG-CAP-to-EAS_Implementation_Guide-V1-0.pdf).

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## **VIDEO DESCRIPTION RULES FOR TV STATIONS TAKE EFFECT JULY 1, 2012**

On July 1, 2012, the FCC's new video description rules will take effect. Beginning on that date, certain television stations in large markets must comply with the 50-hour per quarter requirement, and all network-affiliated stations regardless of market size must comply with the pass-through requirement. The video description rules apply equally to Class A, LPTV, and TV translator stations as well as full power television stations.

In the top 25 markets, commercial television broadcast stations affiliated with ABC, CBS, Fox, and NBC will be required to provide 50 hours *per calendar quarter* of video-described programming during prime time or during children's programming. The rules define "children's programming" as programming directed to children 16 years of age and under. (This definition includes, but is not limited to, all educational and informational children's programs.)

The 50-hour per calendar quarter requirement applies to Big Four affiliated stations in the top 25 markets as determined by Nielsen as of January 1, 2011 (the 2010-2011 DMA rankings). The rules allow a 3-month grace period for new Big Four affiliates in an affected market to begin compliance.

A video-described program will count toward the 50-hour requirement the first time it is aired on the station and once more when it is re-run. In other words, a broadcaster may “count” toward its required 50 hours per quarter each program it airs with video description a maximum of two times. The compliance clock starts “running” for a station once the rules become effective, even if a particular program has been previously aired on that station. A station could count programming toward its 50-hour obligation even if that programming has aired elsewhere with video description, so long as it is airing with video description for the first or second time on that station.

The rules also require *all* network-affiliated stations, including all Big Four and non-Big Four network affiliates, to “pass through” video described programming where they are “technically capable” of doing so, beginning July 1, 2012. Any programming aired with description must always include description if re-aired on the same station.

The pass-through portion of the video description rules includes a “technical capability” requirement, i.e., a station is required to comply with the pass-through rules if the station has “virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.” Pass-through is required to the extent that a station is technically capable, and when that technical capability is not being used for another purpose related to the programming. Thus, for example, if a station is technically capable of passing through video description of a particular program but is using its SAP channel for a Spanish-language audio track, such station is in such circumstance not required to pass through the video description at that time. Although the Order adopting the rules encourages stations to provide video description alongside other audio streams using digital technology, the adopted rules retain this exception where it is not feasible for the station to do so.

For further information about the video description requirements, please refer to our Legal Review dated September 19, 2011. Stations must ensure they are prepared to comply with the requirements applicable in their market and/or to their network and should consult with their communications counsel immediately with any concerns about compliance.

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**DEADLINE TO APPLY FOR DIGITAL LOW POWER TV  
UPGRADE GRANTS IS JULY 2, 2012**

The National Telecommunications and Information Association (NTIA) made approximately \$44 million available for the low power television and translator digital upgrade program. According to recent estimates, millions of dollars in funding is still available for eligible low power stations. Although the priority deadline for eligible stations has passed, eligible stations may still file applications on a rolling basis by the first business day of each month. Time is running short, however, as the program will stop accepting applications on July 2, 2012.

As required by statute, the digital upgrade program provides reimbursement for equipment to upgrade eligible low power TV and TV translator stations in eligible rural communities from analog to digital. That means that eligible stations must first purchase upgrade equipment before they may apply for an upgrade grant.

Both the station and the community it serves must meet certain eligibility requirements for the station to receive upgrade funds. Making eligibility determinations can be complex, and stations may wish to consult with their communications counsel.

NTIA has created a web-based application and instructions on how to file grant applications. Many parts of the form may be completed online. These materials are available at: <http://ssl.ntia.doc.gov/lptv/application/index.htm>. The form must be printed, completed, and submitted to NTIA with original signatures along with one extra copy—NTIA will not accept faxed or e-mailed applications. Applicants should ensure that the mail carrier they use guarantees delivery of the application by the deadline.

Alternatively, applicants may submit the application electronically through the <http://www.grants.gov> website. (An organization must be registered with the Central Contractor Registration to apply through grants.gov. If you wish to register, you may do so at <http://www.ccr.gov>. Note that it may take up to 5 business days to complete the registration process.) NTIA encourages those who apply using the grants.gov website to do so early, as difficulties filing the application through this website will likely not justify filing deadline extensions.

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**COMPLIANCE DATES SET FOR INTERNET CLOSED CAPTIONING;  
FIRST COMPLIANCE DEADLINE IS SEPTEMBER 30, 2012**

As we previously reported, the FCC has adopted rules requiring the closed captioning of video programming delivered using Internet Protocol. The rules are subject to a phased schedule of compliance triggered by publication in the *Federal Register*. Now that the rules have been published, the compliance dates are set. Beginning later

this year, stations will be required to display closed captioning for full-length programming delivered over the Internet if that programming was first closed captioned on a broadcast platform on or after April 30, 2012.

Here are the important dates for closed captioning of video programming delivered using Internet Protocol.

\* *September 30, 2012.* All prerecorded full-length programming that is subject to the new requirements but is not edited for Internet distribution must be captioned by September 30, 2012—6 months after the rules were published in the *Federal Register*—if it is first shown on television with captions on or after April 30, 2012.

\* *March 30, 2013.* All “live” and “near-live” full-length programming that is subject to the new requirements must be captioned by March 30, 2013—1 year after the rules were published in the *Federal Register*—if it is first shown on television with captions on or after April 30, 2012. For purposes of the rules, “live programming” is defined as “video programming that is shown on television substantially simultaneously with its performance,” and “near live” is defined as “video programming that is performed and recorded less than 24 hours prior to the time that it was first aired on television.”

\* *September 30, 2013.* All prerecorded full-length programming that is edited for Internet distribution and is subject to the new requirements must be captioned by September 30, 2013—18 months after the rules were published in the *Federal Register*—if it is first shown on television with captions on or after April 30, 2012.

\* *Progressive Deadline For Archived Material Beginning in 2014.* Beginning March 30, 2014, all archived programming that is subject to the new requirements and archived in the distributor’s library before it is shown on television with captions must be captioned within 45 days after it is shown on television with captions. The deadline will accelerate to 30 days beginning on March 30, 2015, and to 15 days beginning March 30, 2016.

For further information about these rules, please refer to our Legal Review dated March 6, 2012.

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

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