



# 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

September 12, 2018

## Legal Memorandum

### Bracing for Hurricane Florence – FCC Reminds Broadcasters About Requesting STAs, Provides Emergency Contact Info, and More

As Hurricane Florence barrels toward the East Coast, the FCC is providing broadcasters with information they may need to initiate, resume, and maintain operations in the areas affected by the storm. In Public Notices released on September 11, 2018, the Commission (1) detailed how stations affected by Hurricane Florence can make emergency requests for STA (special temporary authority) and (2) provided the FCC’s 24-hour emergency contact information. On its website dedicated to Hurricane Florence, the Commission also reminded television broadcasters about their obligations to make emergency information accessible to viewers who are deaf, hard of hearing, blind, or visually impaired. We are redistributing the FCC’s [August 30, 2018, Public Notice](#) on the same topic by attaching a copy to this memorandum.

*Requests for Special Temporary Authority (“STA”).* Recognizing that broadcasters may need to make emergency requests for STA as a result of Hurricane Florence, the FCC has provided Bureau-specific guidance as to how stations should go about seeking any such storm-related STA.

\* *Media Bureau STA Requests.* Requests to the Media Bureau (which oversees television and radio stations) for STA prompted by the effects of Hurricane Florence may be submitted by informal letter, email, and even by phone if necessary. In addition, requests can also be made in the ordinary manner using the FCC’s regular online filing platforms: For radio stations, that means filing the request for STA electronically through CDBS (the Consolidated Database System); for television stations, that means filing the request for STA electronically through LMS (the Licensing and Management System). An STA is not required if a station is off the air or operating at reduced power for fewer than 30 days. However, if a station is off the air or operating at reduced power for 10 days (but fewer than 30 days), then the station must notify the Media Bureau by the 10<sup>th</sup> day of such silence or reduced power operation.

All Media Bureau STA requests should provide the requested technical parameters of the proposed operation and a point of contact. The Media Bureau will handle the requests as expeditiously as possible. The [Public Notice](#) provides contact information for Commission Staff, including phone numbers and email addresses, that licensees should use when requesting STA via email or by phone.

\* *International Bureau STA Requests.* It's also possible that broadcasters might need to make an emergency request for STA to the International Bureau, which oversees earth stations (i.e., SNG vans and trucks, as well as fixed Ku-band and C-band dishes). The International Bureau's guidance for filing such requests is similar to that provided by the Media Bureau. Requests should include the technical parameters of the proposed operation and a point of contact and can be made via letter, email, or phone—and also through the usual electronic filing platform, called IBFS (the International Bureau Filing System).

The International Bureau also asks licensees who do not file electronically via IBFS to follow-up their initial request with an electronic version submitted through IBFS as soon as possible to ensure a complete record of the action. The International Bureau requests that such follow-up correspondence contain a note in the electronic STA form's first description filed that the request is a "Hurricane-related STA Request," along with the date the initial request was granted. Again, the [Public Notice](#) provides contact personnel (and phone numbers and email addresses) that licensees should use to file STA requests via email or by phone.

*Don't Forget Anti-Drug Abuse Certification!* When stations file a request for STA electronically through the Commission's online systems using the FCC's forms, they must make a federally required certification that they are in compliance with the Anti-Drug Abuse Act. (This is one of the questions on the electronic forms, but you may not even realize you check it each time you submit an application with the FCC!)

The FCC is reminding all licensees filing emergency requests for STA via other means (i.e., letter, email, or even phone) that they must include that same certification of compliance. Yes, this may seem like a bizarre requirement, but it's the law. As such, any licensee submitting an emergency STA request without using the FCC's online filing systems must include a statement with the request that: "Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862."

*FCC's 24/7 Emergency Contact Information.* The FCC's other [Public Notice](#) released on September 11 simply reminded licensees that the Commission is available 24/7 to address emergency communications needs, particularly those relating to the effects of Hurricane Florence. The FCC asks that broadcasters in need assistance to initiate, resume, or maintain communications contact the FCC Operations Center at 202-418-1122, or by email at [FCCOPCenter@fcc.gov](mailto:FCCOPCenter@fcc.gov).

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

*Tim Nelson, Editor*

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

Mark J. Prak  
Marcus W. Trathen  
David Kushner  
Coe W. Ramsey  
Charles F. Marshall  
Stephen Hartzell  
Julia C. Ambrose  
Elizabeth E. Spainhour  
J. Benjamin Davis  
Timothy G. Nelson  
Amanda M. Whorton

---

This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

---

© 2018 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 18-902

Released: August 30, 2018

## REMINDER REGARDING OBLIGATIONS TO MAKE TELEVISED EMERGENCY INFORMATION ACCESSIBLE TO VIEWERS WITH DISABILITIES

The Federal Communications Commission (FCC or Commission) issues this Public Notice to remind video programming distributors (VPDs) – including broadcasters, cable operators, satellite television services, and “any other distributor of video programming for residential reception that delivers such programming directly to the home”<sup>1</sup> – of their obligation under section 79.2 of the Commission’s rules to make televised emergency information accessible to persons with disabilities.<sup>2</sup> This Public Notice also provides information for consumers on how to file complaints for noncompliance with this obligation.<sup>3</sup>

*Background.* Under section 79.2, emergency information is defined 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.”<sup>4</sup> Examples 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.”<sup>5</sup> Critical details include, but are not limited to, “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.”<sup>6</sup> The devastation and loss of life experienced during the 2017 hurricane season that gave rise to Hurricanes Harvey, Irma, Maria, and Nate illustrate the importance of compliance with this rule.<sup>7</sup>

We note that, under section 79.2, critical details about an emergency and how to respond may

---

<sup>1</sup> 47 CFR § 79.1(a)(11) (defining “video programming distributor”).

<sup>2</sup> See 47 CFR § 79.2. Because of the importance of this issue, we have released similar Public Notices in the past. See, e.g., *Reminder Regarding Obligations to Make Televised Emergency Information Accessible to Viewers with Disabilities*, Public Notice, 32 FCC Rcd 7323 (CGB 2017). Unlike the closed captioning obligations contained in section 79.1 of the rules, there are no exemptions to these televised emergency information accessibility requirements. 47 CFR § 79.1.

<sup>3</sup> See 47 CFR § 79.2(c).

<sup>4</sup> 47 CFR § 79.2(a)(2).

<sup>5</sup> *Id.*

<sup>6</sup> Note to 47 CFR § 79.2(a)(2).

<sup>7</sup> See FCC, 2017 Atlantic Hurricane Season Impact on Communications Report and Recommendations, PS Docket No. 17-344 (2018), <https://docs.fcc.gov/public/attachments/DOC-353805A1.pdf> (describing Commission actions taken in response to these hurricanes, as well as observations to assist the Commission, service providers, local and regional emergency response authorities, and other stakeholders when confronting hurricanes, and next steps to improve the Commission’s disaster response and recovery efforts).

need to reach individuals both within and outside an area that is immediately affected by an emergency. This is especially likely to happen when a large-scale disaster primarily affects one region but has an impact on outlying areas. For instance, a major snow storm caused significant damage in several states between Washington, DC and Boston in early March 2018, yet also caused threats to life and property in states neighboring this eastern region.<sup>8</sup>

In addition, while some emergencies have a defined beginning and end, others may be ongoing or have a long aftermath. It is important for critical details about a reported emergency to continue to be accessible to individuals with disabilities during such extended periods, to ensure that people living in the affected communities have up-to-date information, when needed, to effectively respond to the event in a manner that can protect their life, health, safety, and property. For example, the ongoing eruption of Hawaii's Kilauea volcano began in early May 2018 and has lasted for months, destroying over 700 homes and forcing thousands of residents to evacuate during this period.<sup>9</sup> At various times, providing these individuals with accessible, up-to-date information about the path of the lava flow, how to evacuate, and where to seek shelter may be necessary to ensure their safety. Similarly, the devastating wildfires in California during the summer of 2018 that have taken several lives and destroyed over 1,000 homes and businesses,<sup>10</sup> have required constant monitoring by emergency responders and residents alike.

*Individuals who are Blind or Visually Impaired.* To ensure access to emergency information by persons who are blind or visually impaired, Commission rules require that emergency information provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming be made accessible by aurally describing the emergency information in the main audio portion of the programming.<sup>11</sup> When emergency information is conveyed visually during programming other than newscasts (e.g., through "crawling" or "scrolling" text during regular programming), the visual information must be accompanied by an aural tone on the main audio stream.<sup>12</sup> Additionally, such visual emergency information must be conveyed aurally in full at least twice through a secondary audio stream, preceded by an aural tone on that stream.<sup>13</sup> Aural emergency information must supersede all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream.<sup>14</sup> Finally, multichannel video programming distributors (MVPDs) must pass through the secondary audio stream containing audible emergency information when it is provided on linear programming accessed on second screen devices (e.g., tablets, smartphones, laptops, and similar devices) over their networks as part of their MVPD services.<sup>15</sup>

*Individuals who are Deaf or Hard of Hearing.* Commission rules also require access to emergency information provided in the audio portion of programming to persons who are deaf or hard of

---

<sup>8</sup> See The Weather Channel, *Winter Storm Riley Underwent Bombogenesis, Battered the East with Strong Winds, Coastal Flooding and Heavy, Wet Snow (RECAP)* (Mar. 4, 2018), <https://weather.com/storms/winter/news/2018-03-01-winter-storm-riley-noreaster-high-winds-coastal-flooding-heavy-snow>.

<sup>9</sup> See The Guardian, *Hawaii's Kilauea Eruption Could Last for Years, Geologists Warn* (July 23, 2018), <https://www.theguardian.com/us-news/2018/jul/24/hawaiis-kilauea-volcano-eruption-could-last-for-years-geologists-warn>.

<sup>10</sup> See Jennifer Calfas, Time, *There Are 14 Active Wildfires Burning Across California. This Map Shows All of Them* (July 31, 2018, updated Aug. 7, 2018), <http://time.com/5353749/california-fire-map-2018/>.

<sup>11</sup> 47 CFR § 79.2(b)(2)(i).

<sup>12</sup> See 47 CFR § 79.2(b)(2)(ii).

<sup>13</sup> *Id.*

<sup>14</sup> 47 CFR § 79.2(b)(5).

<sup>15</sup> 47 CFR § 79.2(b)(6). See Consumer & Governmental Affairs Bureau Reminds MVPDs of July 10, 2017 Deadline to Pass Through Audible Emergency Information During Linear Programming on Second Screen Devices, Public Notice, 32 FCC Rcd 4773 (CGB 2017). Linear programming is generally video programming that is prescheduled by the MVPD. *Id.* at 4773.

hearing using closed captioning or other methods of visual presentation, including open captioning, crawls or scrolls that appear on the screen.<sup>16</sup> Visual presentation of emergency information may not block any closed captioning, and closed captioning may not block any emergency information provided by crawls, scrolls, or other visual means.<sup>17</sup>

Distributors that are not permitted by Commission rules to use electronic newsroom technique (ENT)<sup>18</sup> to provide closed captions on live programming are required to provide closed captions on all new non-exempt programming, including breaking news and emergency alerts.<sup>19</sup> Entities that are permitted to and do use ENT to create captions for their live programming are reminded that, because the ENT method does not automatically caption non-scripted news, the provider must make the emergency information accessible by some other form of visual presentation as required by section 79.2.<sup>20</sup> Lastly, a distributor in a market that is permitted to use ENT, but instead chooses to use real-time captions in lieu of ENT for its live programming, must provide closed captions on emergency information contained in that programming.

*Individuals with Cognitive Disabilities.* While not required by the Commission's rules, VPDs and video programmers are encouraged to make alerts accessible to people with cognitive disabilities. To

---

<sup>16</sup> 47 CFR § 79.2(b)(1).

<sup>17</sup> See 47 CFR § 79.2(b)(4). We note that some state and local government officials provide American Sign Language (ASL) interpreter services during their televised emergency announcements and press conferences. To the extent this service is provided, we encourage VPDs and video programmers to ensure that the interpreter is visible on the television screen at all times in order to benefit viewers who use ASL. See, e.g., National Council on Disability, *Effective Communications for People with Disabilities: Before, During, and After Emergencies*, <https://ncd.gov/publications/2014/05272014/> (May 27, 2014); National Association of the Deaf, *Position Statement on Accessible Emergency Management for Deaf and Hard of Hearing People*, <https://www.nad.org/about-us/position-statements/position-statement-on-accessible-emergency-management-for-deaf-and-hard-of-hearing-people/> (last visited July 18, 2018).

<sup>18</sup> See 47 CFR § 79.1(e)(3). ENT is a technique that converts the dialogue included on a teleprompter script into captions. For purposes of determining compliance with section 79.1, the Commission's rules permit live programming to be captioned using ENT, with the exception of live programming exhibited by the major national broadcast television networks (i.e., ABC, CBS, Fox, and NBC), affiliates of these networks in the top 25 television markets, and national non-broadcast networks serving at least 50% of all homes subscribing to multichannel video programming services. *Id.*

<sup>19</sup> See *Obligation of Video Programming Distributors to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning*, Public Notice, 21 FCC Rcd 15084 (CGB 2006) (providing examples of the types of steps that VPDs may take to help obtain closed captioning resources quickly); see also *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014) (adopting captioning quality standards – accuracy, synchronicity, program completeness, and placement – and technical compliance rules).

<sup>20</sup> See *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Accessibility of Emergency Programming*, Second Report and Order, 15 FCC Rcd 6615, 6623-24, para. 16 (2000).

achieve this, it would be helpful to provide emergency information and instructions in plain language, and through multiple means (e.g., maps, charts, and other pictorial information).<sup>21</sup>

### **Consumer Complaints and Enforcement**

The Commission will continue to monitor complaints alleging violations of section 79.2 and will review them for possible enforcement action. If you are a consumer who has a complaint regarding the inaccessibility of emergency information, you may file a complaint with the FCC.

You may file your complaint with the FCC online at [www.fcc.gov/complaints](http://www.fcc.gov/complaints) or by contacting the FCC using the following methods:

By mail (please include your name, address, contact information and as much detail about your complaint as possible):

Federal Communications Commission  
Consumer and Governmental Affairs Bureau  
Consumer Inquiries and Complaints Division  
445 12th Street, SW  
Washington, DC 20554

Phone: 1-888-225-5322 (voice); 1-844-432-2275 (videophone); 1-888-835-5322 (TTY)  
Fax: 866-418-0232

More information about access to televised emergency information is available at the FCC's Web site at <https://www.fcc.gov/general/access-emergency-information-television>.

To request this Public Notice or any other materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov).

Consumer and Governmental Affairs Bureau Contact: Debra Patkin, Attorney Advisor, Disability Rights Office, 202-870-5226, e-mail [Debra.Patkin@fcc.gov](mailto:Debra.Patkin@fcc.gov).

-FCC-

---

<sup>21</sup> See *Reminder Regarding Obligations to Make Televised Emergency Information Accessible to Viewers Who Are Deaf, Hard of Hearing, Blind, or Visually Impaired and Recommendations to Improve Access for Viewers with Cognitive Disabilities*, Public Notice, 31 FCC Rcd 10906, 10909-10 (CGB 2016); see also Consumer and Governmental Affairs Bureau, Federal Communications Commission, *Individuals with Cognitive Disabilities: Barriers to and Solutions for Accessible Information and Communication Technologies* (2016), <https://docs.fcc.gov/public/attachments/DOC-341628A1.pdf> (FCC White Paper containing best practices for making communications accessible to people with cognitive disabilities).