

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC20554**

In the Matter of	)	
	)	
Accessible Emergency Information, and	)	MB Docket No. 12-107
Apparatus Requirements for Emergency	)	
Information and Video Description:	)	
Implementation of the Twenty-First	)	
Century Communications and Video	)	
Accessibility Act of 2010	)	

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

**I. INTRODUCTION AND SUMMARY**

The Telecommunications Industry Association (“TIA”)<sup>1</sup> hereby submits comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”),<sup>2</sup> which seeks comment on proposed rules that aim to make emergency information be accessible to individuals who are blind or visually impaired and that certain equipment be capable of delivering video description and emergency information to those

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<sup>1</sup> TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design, produce, and deploy a wide variety of devices with the goal of making technology accessible to all Americans. TIA’s standards committees, which operate under an American National Standards Institute-accredited process, create consensus-based voluntary standards for numerous facets of the ICT industry.

<sup>2</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*, FCC 12-142, MB Docket No. 12-107 (Nov. 19, 2012) (“NPRM”).

individuals pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010's<sup>3</sup> communications accessibility obligations, to the extent accessibility barriers still exist with respect to new communications technologies, and other related issues. TIA supported the passage of the CVAA and commends the Commission for initiating this proceeding to help those who are blind or visually impaired have access to timely and potentially life-saving video description and emergency information.

We first note our agreement with the Commission that programming rules should not be expanded beyond television broadcast and multichannel video programming distributors, and that applicable apparatuses to this rulemaking are those which can receive, play back, or record television broadcast or MVPD service per Congress' intent. We do however ask that the Commission provide additional clarification that an apparatus that does not play linear live video programming is not required to display emergency information, and that the video description rules do not apply to apparatus such as personal computers, smart phones, tablet PCs, and gaming consoles used to watch Internet protocol-delivered programming.

We also note that a sufficient phase-in period is required for the effective implementation of the CVAA rules. Manufacturers affected by this rulemaking will need to design and develop the hardware and software necessary to comply with the rules, and television broadcasters will need to acquire and deploy solutions on their end to enable video description and emergency information transmission. TIA specifically notes that a phase-in period of at least two years is appropriate.

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<sup>3</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) ("CVAA" or "Act").

We next urge the Commission to grant prospective categorical waivers for equipment and services that have an incidental television programming viewing component that might, standing alone, be subject to the CVAA. As we have previously advocated, the granting of categorical waivers would provide manufacturers and industry participants with much-needed certainty that will spur innovation generally in new devices that may have incidental video playback capability.

Lastly, we encourage the use of safe harbors to ensure compliance with the law. TIA reiterates its support for the use of industry-developed technical standards as a safe harbor for compliance to covered products where possible, though not in lieu of more general performance objectives. We also note our opposition to the mandating of any specific standards.

## **II. TIA MEMBERS SUPPORT THE COMMISSION’S EFFORTS TO ENHANCE THE DELIVERY OF EMERGENCY INFORMATION AND VIDEO DESCRIPTION CONSISTENT WITH THE CVAA**

TIA supports the Commission’s efforts to help those who are blind or visually impaired have access to timely and potentially life-saving video description and emergency information. TIA member companies have consistently taken steps to work with the advanced communications services (“ACS”) user community, including persons with disabilities, to ensure that all consumers can access such advanced services and devices, and continues to update technology standards.<sup>4</sup> We reiterate that the Commission should ensure that any voluntary measures already underway are not derailed by actions taken in this matter,<sup>5</sup> as these voluntary efforts will offer increased access, including captioning in IP-delivered programming.

## **III. THE COMMISSION SHOULD INCORPORATE FLEXIBILITY INTO ITS INTERPRETATION OF THE SCOPE OF APPLICABLE PRODUCTS AND SERVICES**

Regulatory uncertainty is inversely correlated to investment and innovation. TIA believes that the Commission can, by ensuring that it uses a flexible approach moving forward, reduce a

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<sup>4</sup> For example, TIA’s TR-41 has developed and published an updated standard for Part 68 volume control called conversational gain, a more rational and intuitive way to measure telephone speech amplification than currently-used Receive Objective Loudness Rating (“ROLR”) requirements, particularly for hard-of-hearing consumers who require an accurate reading on loudness before purchasing terminal equipment. TIA currently has a pending Petition for Rulemaking before the Commission requesting that its references to our relevant standards be updated. See TIA Petition for Rulemaking, Docket No. \_\_\_\_ (filed Oct. 25, 2012), available at <http://www.tiaonline.org/sites/default/files/pages/TIA%20Petition%20for%20Rulemaking%20-%20Part%2068%20%28Terminal%20Equipment%29%20102512.pdf>.

In addition, an overview of the most recent TR-41 (and all other TIA standards committees’) activity is provided in TIA’s annually released report on its standards activity. See TIA, *Standards & Technology Annual Report 2011-2012* (2012), available at [http://www.tiaonline.org/standards/about/documents/STAR\\_2012\\_Web.pdf](http://www.tiaonline.org/standards/about/documents/STAR_2012_Web.pdf).

<sup>5</sup> See, e.g., Ex Parte of TIA, CC Docket No 93-268; CG Docket No. 10-266 (filed Aug. 26, 2011).

major barrier to accessibility – regulatory uncertainty – and in this way increase the availability of emergency information and video description in products and services to disabled populations.

For example, as the Commission notes, different types of Multichannel Video Programming Distributor (“MVPD”)-provided apparatus’ will have varied costs for compliance.<sup>6</sup> In addition, because no enforcement action has yet been taken, an established level of recordkeeping cannot easily be determined. As TIA has noted in previous comments on the CVAA,<sup>7</sup> the FCC should afford manufacturers maximum flexibility in meeting the requirements of the CVAA consistent with Congressional intent.<sup>8</sup> As with the implementation of Section 716, TIA supports the use of only the four factors enumerated in the statute to make a determination of achievability, which we have discussed in detail in previous CVAA-themed filings.<sup>9</sup>

#### **A. TIA Agrees that Programming Rules Should Not be Expanded Beyond Television Broadcast and Multichannel Video Programming Distributors**

In the NPRM, the Commission addresses whether emergency information and video description rules in this proceeding should be extended beyond the category of programming already covered by the Commission’s existing emergency information and video description rules.<sup>10</sup> The Commission notes that Congress did not explicitly extend the scope of the emergency information rules to IP-delivered video programming, and that the Video

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<sup>6</sup> See NPRM at ¶ 14.

<sup>7</sup> See, e.g., Comments of TIA, CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (filed Apr.25, 2011) at 10.

<sup>8</sup> See, e.g., See H.R. Rep. No. 111-563 at 26 (2010).

<sup>9</sup> See, e.g., Comments of TIA, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145 (Apr. 25, 2011) at 15-19 (“TIA CVAA Implementation Comments”).

<sup>10</sup> See NPRM at ¶ 6.

Programming Accessibility Advisory Committee’s (“VPAAC”) feasibility determinations supported this decision as well.<sup>11</sup> In addition, the Commission in its 2011 Report and Order reinstating the video description rules did not expand the applicability of its rules to IP-delivered programming.<sup>12</sup> Based on the Commission’s analysis, we note our agreement with the determination that the emergency information and video description rules should apply to “television broadcast services and MVPD services, but not to IP-delivered video programming that is not otherwise an MVPD service.”<sup>13</sup>

Any new “specific capabilities” mandates should be very carefully considered and should allow for maximum manufacturer and provider flexibility in design and operation. For example, the Commission briefly discusses possibly requiring text-to-speech (“TTS”) capability in apparatus’. We do not support this proposed mandate for TTS as written because (1) as the Commission notes in NPRM, existing TTS not reliable enough to provide accurate and audible information;<sup>14</sup> and (2) it places an unfair burden on the device manufacturer: to ensure emergency information and video description is available in televisions and devices, Instead a platform-based solution is required in which the required content is added by the program owner or the MVPD or broadcast service provider.

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<sup>11</sup> See Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: Access to Emergency Information at 9 (“VPAAC Second Report”).

<sup>12</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 (2011).

<sup>13</sup> NPRM at ¶ 6.

<sup>14</sup> NPRM at ¶ 14.



**B. TIA Agrees that Applicable Apparatuses to this Rulemaking are Those Which Can “Receive, Play Back, or Record [TV] Broadcast or MVPD Service” Per Congress’ Intent**

In the NPRM, the Commission also addresses which apparatus should be subject to the video description and emergency information requirements of Section 203 of the CVAA. The Commission proposes to limit the scope of the rules in this proceeding to apparatus that make available the type of programming that is subject to existing emergency information rules and video description rules, resulting in apparatus requirements that would not apply to an apparatus that displays IP-delivered video programming.<sup>15</sup> TIA supports the Commission’s analysis in this proposed determination.

However, we do urge the Commission to provide additional clarification that an apparatus that does not play linear live video programming is not required to display emergency information. Specifically, TIA supports the Commission making the determination that apparatus’ that play previously-recorded live content, including over a download or stream, be deemed to not trigger Section 203 requirements. We base our position on (1) the Commission’s recognition in the NPRM that “emergency information will no longer be pertinent at the time consumers play back video programming on removable media players,”<sup>16</sup> and (2) because viewing emergency information that is no longer timely would likely result in harm to the public interest as some consumers would be relying on outdated information regarding potentially life-threatening situations.<sup>17</sup>

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<sup>15</sup> See NPRM at ¶ 30.

<sup>16</sup> See NPRM at ¶ 34.

<sup>17</sup> We note that the Commission already has rules in place to prevent the broadcasting of hoaxes for this reason. See 47 CFR 73.1217. In addition, Congress has recognized that the timeliness of emergency information is important. See also H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 at 29 (2010) (“House Committee Report”).

We also request that the Commission clarify that the video description rules do not apply to apparatus such as personal computers, smart phones, tablet PCs, and gaming consoles used to watch Internet protocol (“IP”)-delivered programming. We base this request on the language of the CVAA, which states that video description rules “apply to video programming . . . insofar as [such] programming is transmitted for display on television in digital format.”<sup>18</sup> We believe that this language clearly indicates Congress’ desire to apply Section 202 to television receivers in the traditional format, and not IP-delivered programming. For this reason, any IP-based content regardless of origination should not trigger Section 202 requirements. In addition, many broadcasters and MVPDs are likely to ensure that their software on apparatus’ viewing IP-delivered content is video description- and emergency information-enabled.

#### **IV. A SUFFICIENT PHASE-IN PERIOD IS REQUIRED FOR EFFECTIVE IMPLEMENTATION OF THE RULES**

The Commission has already acknowledged in related rulemakings that an appropriate phase-in period is needed to ensure that technical feasibility issues can be fully addressed.<sup>19</sup> ICT manufacturers affected by this rulemaking will need to design and develop the hardware and software necessary to comply with the rules, and television broadcasters will need to acquire and deploy solutions on their end to enable video description and emergency information transmission. Based on product cycles and time needed for implementation, we specifically

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<sup>18</sup> 47 USC § 613(f)(2)(A).

<sup>19</sup> See, e.g., *Close Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012) at ¶ 34.

believe that the Commission should allow for *at least* two years as the deadline for apparatus' to meet the requirements adopted in this proceeding after industry-consensus mechanism exists.

**V. THE COMMISSION SHOULD USE ITS WAIVER AUTHORITY CONSISTENT WITH THE INTENT OF THE CVAA TO AFFORD MANUFACTURERS THE FLEXIBILITY TO INNOVATE**

TIA urges the Commission to use its Section 203(a)(C) authority to grant prospective categorical waivers for these equipment and services, such as those that have an incidental television programming viewing component that might, standing alone, be subject to the CVAA. Congress gave the Commission authority under Section 203 that authorizes the Commission, either to waive the requirements of Section 303(u) of the Act “for any apparatus or class of apparatus (i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or (ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound, but whose essential utility is derived from other purposes.”<sup>20</sup> TIA believes that the Commission is capable of distinguishing between products with incidental television programming viewing capability and products where it is not. Granting categorical waivers would provide manufacturers and industry participants with much-needed certainty that will spur innovation generally in new devices that may have incidental video playback capability.

As TIA has previously noted with regards to the CVAA, although the Commission has the authority to address waiver requests on a retrospective and product/model/etc.-specific basis, such waivers would only speak to the distinct conditions of a manufacturer or services provider,

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<sup>20</sup> 47 U.S.C. § 303(u)(2)(C); *See also* See S. Rep. No. 111-386 at 14; H.R. Rep. No. 111-563 at 30.

and should not be considered a substitute for prospective categorical waivers.<sup>21</sup> Individualized retroactive waivers create risk and uncertainty for the petitioner, who may choose to stop production on a particular product, or stop the offering of particular features/ functions to the general public, rather than gamble on the waiver process. At the very least, the Commission should address waiver requests under Section 303(u) in a manner consistent with those under Section 716 to ensure that uncertainty created in an individualized waiver process does not chill innovation. TIA believes that the waiver should remain in effect so long as the conditions under which they were granted remain.

## **VI. THE COMMISSION SHOULD ADOPT SAFE HARBOR RULES BASED ON INDUSTRY-DEVELOPED TECHNICAL STANDARDS**

While Section 203 directs the Commission to promulgate regulations that include “any technical standards, protocols, and procedures needed for the transmission of” video description and emergency information,<sup>22</sup> TIA reiterates its support for the use of industry-developed technical standards as a safe harbor for compliance to covered products where possible, though not in lieu of more general performance objectives.<sup>23</sup> The VPAAC notes areas in which standards are needed in this effort, and standards developed for televisions many years ago are not compatible with newer technologies that enable consumers to view content. For example, TIA members do not support the “mandating” of a standard for multiple audio devices.<sup>24</sup>

Safe harbor technical standards are an effective tool to ensure consistency and transparency for entities seeking compliance. TIA again encourages the use of voluntary,

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<sup>21</sup> TIA CVAA Implementation Comments at 9.

<sup>22</sup> Pub. L. No. 111-260, § 203(d).

<sup>23</sup> *See, e.g.* TIA CVAA Implementation Comments at 27-28.

<sup>24</sup> *See, e.g.*, NPRM at ¶ 24.

consensus-based and open industry standards, and urges the Commission to continue to encourage industry to propose additional standards, but such technical standards should not be mandated.

## **VII. CONCLUSION**

For the foregoing reasons, TIA urges the Commission to act consistent with the recommendations above.

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