



150 Fayetteville Street  
Post Office Box 627  
Raleigh, North Carolina 27602  
919-821-7300

LEGAL REVIEW

Brooks, Pierce, McLendon,  
Humphrey & Leonard, L.L.P.  
Counsel to NCAB  
919-839-0300

September 10, 2018

## Legal Memorandum

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*In this issue, link to information about*

*Developments:* [Reminders in Preparation for Hurricane Florence](#)  
[FCC Cancels DIRS Exercise Ahead of Hurricane Florence](#)

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### Preparing for Hurricane Florence? “First Informer” Status and Other Federal Benefits Available to Broadcasters; TV Stations Reminded to Comply with Accessibility Rules

As TV and radio stations along the East Coast continue to watch Hurricane Florence’s path and provide their viewers crucial information about the approaching storm, it’s time to remind (A) all stations of certain federal “benefits” available to broadcasters during times of weather disasters, and (B) TV stations of their accessibility obligations when providing “emergency information” to viewers.

#### **A. Federal “Benefits”**

*First Informer Status.* As stations work to ensure that their signal does not go dark during the storm, stations should be aware of their status as a “First Informer.”

Congress passed the [Consolidated Appropriations Act of 2018](#) back in March, which revised the statutory definition of the term “Essential Service Provider” at a disaster site. The definition of “Essential Service Provider” (commonly referred to as a “First Informer”) now includes the following communications services: “wireline or mobile telephone service, Internet access service, *radio or television broadcasting*, cable service, or direct broadcast satellite service.”



Those changes to the definition of “Essential Service Provider” are important because, under federal law, federal agencies cannot “deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service.” Stated more simply, absent exceptional circumstances, a federal official cannot prevent broadcast station personnel from accessing a federal disaster area if access is necessary to restore or repair broadcast facilities. In the past, federal officials have prevented gasoline trucks headed to TV stations to provide fuel for generators from reaching stations in disaster areas. Federal officials cannot do so now.

Note that the definitional change discussed above only affects federal officials and does not apply to areas that are not federal disaster areas. According to NAB, about a dozen states have previously adopted legislation that grants broadcast station personnel “First Informer” status in a state disaster area.

*Federal Priority Services.* The Federal government has three Priority Services to support National Security/Emergency Preparedness activities: Telecommunications Service Priority (TSP), Government Emergency Telecommunications Service (GETS), and Wireless Priority Service (WPS). The FCC touts all three programs as important aspects of emergency communications strategy.

(1) [Telecommunications Service Priority](#). TSP is an FCC program that directs telecommunications service providers (e.g., wireline and wireless phone companies) to give preferential treatment to users enrolled in the program when they need to add new lines or have their lines restored following a disruption of service, regardless of the cause. Enrollment in TSP ensures that wireline circuits are restored on a priority basis. The TSP FAQs and enrollment guide for broadcasters are available at <https://www.fcc.gov/general/telecommunications-service-priority>.

(2) [Government Emergency Telecommunications Service](#). GETS is a National Communications System (NCS) program that prioritizes calls over wireline networks when congested. Users receive an access card (GETS card), which has both the universal GETS access number and a Personal Identification Number (PIN). Information about the GETS program is available at <https://www.fcc.gov/general/government-emergency-telecommunications-service>. (GETS priority is available any time wireline networks are congested, not only during disasters.)

(3) [Wireless Priority Service](#). WPS is also an NCS program, and it authorizes cell providers to prioritize calls over wireless networks when congested. Information about WPS is available at <https://www.fcc.gov/general/wireless-priority-service-wps>. (Like GETS, WPS priority is available any time wireless networks are congested, not only during disasters.)

## **B. TV Station Accessibility Obligations**

All television stations have certain obligations to make “emergency information” available to viewers with hearing and visual disabilities. Much of the information that stations will be reporting to viewers about Hurricane Florence will fall within the definition of “emergency information.”



Each year, the FCC issues a Public Notice reminding TV stations of the accessibility obligations. The [2018 Public Notice](#) was released on August 30, 2018, and a copy is attached to this memorandum. As television stations prepare for Hurricane Florence's approach, the Public Notice is a "must read" for station management and for news, engineering, and programming staff. While the Public Notice is not a comprehensive recitation of all the nuances of the accessibility rules, it is a good place to start your planning.

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## FCC Cancels DIRS Exercise Ahead of Hurricane Florence

With Hurricane Florence bearing down on the East Coast, the FCC has elected to cancel its voluntary DIRS 2018 exercise that had been scheduled for September 13 – 14, 2018 (it had originally been scheduled for August 23 – 24 but was rescheduled as a result of Hurricane Lane). "DIRS" is the abbreviation for the FCC's "Disaster Information Reporting System." The FCC is planning to have a DIRS exercise after the hurricane season ends, and we will provide more information about that exercise as it becomes available.

As we have reported recently, participation in DIRS is strictly voluntary, but the FCC recommends that stations strongly consider electing to participate in it. DIRS is a web-based system that communications providers, including broadcasters, can use to report real-time communications infrastructure status and situational awareness information to the FCC during times of crisis, including severe weather events. When DIRS is activated during real disasters, broadcasters report information, including whether stations are transmitting, the power status and locations of transmitters, whether the stations are transmitting from alternate locations, and whether stations have functioning generators. If Hurricane Florence continues on its current trajectory as a hurricane, it is likely that the FCC will activate DIRS for stations in affected areas.

*Registration for DIRS Remains Available.* Broadcasters that have not already registered in DIRS can do so now. The FCC provides these instructions to register for DIRS:

- Go to the URL for DIRS at <https://www.fcc.gov/nors/disaster/>.
- For broadcasters that do not have a login, there is a link on the login page that will allow broadcasters to get a User ID and password.
- When creating a new account, the FCC asks that users use a company name instead of station name under "Reporting Company." If a company name is used, only one account will be needed to input information on any station owned by the company.
- There is a "forgotten password" link on the login page for those that have a User ID but do not remember the password.
- The FCC requests broadcasters that have a User ID and a password to use them to log into DIRS and update contact information if needed.
- The Commission has made a User Manual available at the DIRS website.

Many broadcast groups have instructed their stations to register for—and participate in—DIRS. Some broadcast groups have determined that local stations can best make those decisions



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for themselves. If your station is part of a group of commonly-owned stations, be sure to check internally whether it is desirable to register for DIRS.

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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

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# 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

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<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

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<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

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<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).

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<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).