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Consistent with its recent actions expanding the Federal Communications Commission's ("FCC") oversight of the Internet and of privacy, the FCC has further extended its reach in another area—disability access. Expanding on its requirements that television broadcasters provide disability access to emergency programming, the FCC has adopted new requirements that video device manufacturers (TVs, set-top boxes, tablets, laptops and smartphones) and multi-channel video programmers provide the blind and visually impaired with simple access to emergency information. All companies that participate in the video or telecommunications space should watch for FCC action in this area as FCC Chairman Wheeler feels strongly that his agency has a mission to make information accessible.

Under the new rules, manufacturers who sell televisions and set-top boxes must provide a simple and easy to use mechanism for activating the unit's secondary audio stream for audible emergency information—a button, key, icon, or something equivalent. The FCC's deadline for compliance is December 20, 2016, which is also the deadline for other previously established accessibility features.

The new rules also require multi-channel video programmers ("MVPDs") like cable companies and satellite television providers to ensure that linear programming accessed over an MVPD's network using a laptop, smartphone, tablet or other device allows consumer access to emergency programming through a secondary audio stream. This requirement currently will apply only to consumers watching linear programming in their homes on second screens. It does not apply when consumers access "over the Internet" programming on such devices outside of the home. As cable operators expand their services to out-of-home Wi-Fi networks, however, the scope of this rule may expand and the FCC is seeking comment on whether to extend the rule to outside of the home viewing. In a separate proceeding, the FCC is also currently reviewing what types of over the top video service providers, in addition to traditional cable operators, should be considered MVPDs, and these new requirements may also apply to those video providers.

While the FCC is not currently asserting authority over video providers such as Netflix or YouTube or over video apps, the FCC could move in that direction, especially if it is successful in upholding its rules adopted earlier this year on Internet network neutrality. Website operators and Internet video providers may, however, already be covered by the accessibility provisions of the Americans with Disabilities act of 1990 (the "ADA") which can result in similar requirements.

Making technology accessible and available to all Americans is a policy goal of the current federal administration. Accordingly, initially designing products and services with accessibility issues in mind can prevent regulatory and legal problems going forward.

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