



Federal Communications Commission
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SMALL ENTITY COMPLIANCE GUIDE

Accessibility of User Interfaces, and Video Programming Guides and Menus

FCC 24-79

MB Docket No. 12-108

Released July 19, 2024

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

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I. OBJECTIVES OF THE PROCEEDING

Closed captioning displays the audio portion of a television program as text on the screen, providing access to news, entertainment, and information for individuals who are deaf and hard of hearing. Pursuant to the Television Decoder Circuitry Act of 1990 (TDCA),¹ the Federal Communications Commission (Commission) adopted standards for the display of closed captions on digital television receivers which enable users to customize caption display by changing the font, size, color, and other features of captions. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),² the Commission adopted display standards for other video devices, specifically for apparatus designed to receive or play back video programming transmitted simultaneously with sound.³ Despite these standards, consumer groups have described the difficulties consumers who are deaf and hard of hearing face in accessing closed captioning display features.

In response to consumer concerns, the Commission issued a *Second Further Notice of Proposed Rulemaking* in 2015 that proposed to adopt rules that would require manufacturers and multichannel video programming distributors (MVPDs) to ensure that consumers are able to readily access user display settings for closed captioning.⁴ The Media Bureau has since sought comment multiple times since the release of the *Second Further Notice of Proposed Rulemaking*. Most recently, in 2024, the Media Bureau sought comment on a joint proposal from NCTA – the Internet and Television Association and a coalition of consumer groups to make closed caption display settings readily accessible.⁵ In the *Third Report and Order*, the Commission: (1) affirmed its authority under the TDCA to adopt the new rules; (2) adopted the requirement that closed captioning display settings must be “readily accessible” and outlined the factors used to make this determination; (3) found that the public interest benefits outweigh the costs of the new rules; (4) specified the entities and devices covered by the rule; (5) discussed the availability of waivers or exemptions based on achievability and technical feasibility; and (6) established a compliance deadline for the new rules. The Commission takes these steps to alleviate the difficulties individuals with disabilities have had accessing the closed captioning display settings on televisions and other video devices, furthering our efforts to ensure meaningful access to closed captioning.

II. COMPLIANCE REQUIREMENTS

A. Readily Accessible Requirement (47 CFR § 79.103(e))

The *Third Report and Order* requires covered manufacturers and MVPDs to make closed captioning display settings readily accessible to consumers on covered apparatus. The Commission affords covered entities flexibility in how they meet this obligation and will use four factors to determine whether the closed captioning display settings are “readily accessible”— proximity, discoverability, previewability, and consistency and persistence. Failure to comply with any of these factors may be deemed a violation of the Commission’s rules.

¹ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

² Pub. L. No. 111-260, 124 Stat. 2751 (2010); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

³ *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-154, 27 FCC Rcd 787 (2012).

⁴ *See Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, MB Docket No. 12-108, 30 FCC Rcd 13914, 13932-35, paras. 33-40 (2015).

⁵ *Media Bureau Seeks Comment on Joint Closed Captioning Display Settings Proposal*, Public Notice, MB Docket No. 12-108, DA 24-276 (Mar. 19, 2024).

- *Proximity.* The closed captioning display settings must be available in one area of the settings that is accessed via a means reasonably comparable to a button, key, or icon.
- *Discoverability.* To ensure that closed captioning display settings are “discoverable,” covered entities must:
 1. Work with consumers and disability groups to test whether closed captioning display settings can be easily found.
 2. Make good faith efforts to correct problems identified in the testing process.
 3. Train customer-facing employees on how to advise customers on closed captioning display settings.
- *Previewability.* Viewers must be able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings.
- *Consistency and Persistence.* The “consistency and persistence” factor requires covered entities to:
 1. For MVPDs that provide navigation devices, expose closed caption display settings via an application programming interface (API) or similar method that an over-the-top application provider can use upon launch of their application on the device. The API or similar method must enable the application provider to use the device-level caption settings for its own content, if it chooses, and covered entities must notify application developers about the API or similar method through any reasonable means.
 2. For MVPDs that provide their own video programming application hosted on third-party devices, utilize the operating system-level closed caption settings of the apparatus upon launch of the application on the device.
 3. For manufacturers, ensure that the apparatus they manufacture makes closed caption settings available to applications via an API or similar method.

B. Covered Devices and Entities (47 U.S.C § 303(u))

The new rules apply to manufacturers as well as MVPDs for devices covered by section 303(u) of the Communications Act of 1934, as amended, which includes apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size.⁶

The rules do not apply to third-party, pre-installed applications, or to equipment manufactured prior to the compliance deadline. In addition, the following devices are **not** subject to the new rules:

- Apparatus exempt from the requirement to be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming, such as display-only video monitors and professional or commercial equipment.
- Equipment for which the requirement has been determined to be unachievable or technically infeasible.
- Equipment for which the requirement has been waived, such as apparatus primarily designed for purposes other than receiving or playing back video programming.

⁶ 47 U.S.C. § 303(u).

C. Waivers and Exemptions (47 CFR § 79.103(e))

Covered entities must comply with the new “readily accessible requirement” only if doing so is “achievable” for apparatus that use a picture screen less than 13 inches in size, and only if “technically feasible” for all apparatus.⁷ Consistent with Commission precedent and the CVAA,⁸ the waiver and exemption procedures based on achievability and technical feasibility apply as follows:

- *Achievability.* Compliance is “achievable” if it can be obtained “with reasonable effort or expense,” which will be determined on a case-by-case basis based on the following factors:
 1. The nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question;
 2. The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the deployment of new communications technologies;
 3. The type of operations of the manufacturer or provider; and
 4. The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features and that is offered at different price points.

Covered apparatus that use a picture screen less than 13 inches in size must comply with the new “readily accessible” requirement only if doing so is “achievable.”

If a covered entity believes that compliance with the rule is not achievable, it may either seek a determination from the Commission before manufacturing or importing the apparatus or raise achievability as a defense in the event of a complaint or Commission enforcement action.

- *Technical Feasibility.* To demonstrate technical infeasibility, a covered entity must show that changes to the design of the apparatus to make closed captioning display settings readily accessible are not physically or technically possible, not just difficult to implement.

Covered entities can seek a determination from the Commission before manufacturing or importing the product or raise a defense of technical infeasibility in the event of a complaint or Commission enforcement action.

D. Compliance Deadline

Covered entities are afforded 24 months to implement and comply with the requirements of the *Third Report and Order* (until August 17, 2026), or until after the Office of Management and Budget completes its review of any new or modified information collection requirements, whichever is later. The Commission however encourages compliance with the rules as soon as it is technically feasible for covered entities to do so.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

Covered entities are required to notify application developers by any reasonable means about the API or similar method by which covered MVPDs providing navigation devices must expose closed captioning display settings. More generally, in the event that an allegation of non-compliance arises against an entity, an entity must have the information it will need to demonstrate how it has complied with the applicable requirements. Similarly, MVPDs and manufacturers that seek exemptions and waivers based on the requirement not being technical feasible, and/or not achievable, must have relevant records and may make a filing with the Commission to substantiate such claims.

⁷ 47 CFR § 79.103(e).

⁸ 47 U.S.C. § 303(u).

IV. IMPLEMENTATION DATE

The *Third Report and Order* is effective as of September 16, 2024. The compliance deadline for MVPDs and manufacturers to implement the adopted requirements is after the Office of Management and Budget completes its review of any new or modified information collection requirements, or August 17, 2026 (24 months after Federal Register publication), whichever is later. The Media Bureau will publish a Public Notice in the Federal Register announcing the compliance date and revising 47 CFR § 79.103(e) of the Commission's rules.

V. INTERNET LINKS

A copy of the *Third Report and Order* is available at:
<https://docs.fcc.gov/public/attachments/FCC-24-79A1.pdf>.

A copy of the Federal Register Summary of the *Third Report and Order* is available at:
<https://www.govinfo.gov/content/pkg/FR-2024-08-15/pdf/2024-17479.pdf>.