



Federal Communications Commission
Washington, D.C. 20554

November 25, 2013

DA 13-2253

Small Entity Compliance Guide

Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

MB Docket No. 11-154
FCC 12-9
Order on Reconsideration, FCC 13-84

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely 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 may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

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 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 to 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)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
fccinfo@fcc.gov

OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in MB Docket No. 11-154, the Commission sought to fulfill certain of its responsibilities under the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) by:

- Adopting rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered using Internet protocol (“IP”); and
- Adopting rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming.

The rules adopted will better enable individuals who are deaf or hard of hearing to view IP-delivered video programming, as Congress intended.

In the *Order on Reconsideration* in MB Docket No. 11-154, the Commission affirmed, modified, and clarified certain decisions adopted in the *Report and Order*.

COMPLIANCE REQUIREMENTS

1. **Background Information: Definitions**

- Closed captioning is the visual display of the audio portion of video programming pursuant to the technical specifications set forth in Part 79 of the Commissions’ rules. 47 C.F.R. § 79.4(a)(6).
- Internet protocol (IP) includes Transmission Control Protocol and a successor protocol or technology to Internet protocol. 47 C.F.R. § 79.4(a)(5).
- Video programming is programming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media. 47 C.F.R. § 79.4(a)(1).
- A video programming owner (VPO) is any person or entity that either:
 - (i) licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses IP; or
 - (ii) acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses IP. 47 C.F.R. § 79.4(a)(4).
- A video programming distributor or video programming provider is any person or entity that makes available directly to the end user video programming through a distribution method that uses IP. 47 C.F.R. § 79.4(a)(3). Since we define video programming distributors (VPDs) and video programming providers (VPPs) as meaning the same thing, we refer to them both as VPDs.
- Nonexempt programming is video programming that is not exempted pursuant to the procedures for exemption based on economic burden and, accordingly, is subject to the IP closed captioning requirements. 47 C.F.R. § 79.4(a)(14).

- Full-length video programming is video programming that appears on television and is distributed to end users, substantially in its entirety, via IP, excluding video clips or outtakes. 47 C.F.R. § 79.4(a)(2).
 - Video clips are excerpts of full-length video programming. 47 C.F.R. § 79.4(a)(12).
 - Outtakes include content that is not used in an edited version of video programming shown on television. 47 C.F.R. § 79.4(a)(13).

2. **Obligations of Video Programming Owners, Distributors, and Providers**

- General requirement: The CVAA required the Commission to revise its regulations to require the provision of closed captioning on IP-delivered video programming that was published or exhibited on television with captions after the effective date of the regulations. 47 U.S.C. § 613(c)(2)(A).
- Obligations of video programming owners (VPOs)
 - Each VPO must send program files to VPDs with required captions, with at least the same quality as the television captions provided for the same programming. 47 C.F.R. § 79.4(c)(1)(i).
 - If a VPO provides captions to a VPD using the Society of Motion Picture and Television Engineers Timed Text format (SMPTE-TT), then the VPO has fulfilled its obligation to deliver captions to the VPD in an acceptable format. 47 C.F.R. § 79.4(c)(1)(i).
- Obligations of video programming distributors and providers (VPDs)
 - Each VPD must enable the rendering or pass through of all required captions to the end user, maintaining the quality of the captions provided by the VPO and transmitting captions in a format reasonably designed to reach the end user in that quality. 47 C.F.R. § 79.4(c)(2)(i).
 - A VPD that provides applications, plug-ins, or devices in order to deliver the video programming must comply with applicable device requirements discussed below. 47 C.F.R. § 79.4(c)(2)(i).
 - The new rules require VPDs to make contact information available to end users for the receipt and handling of written IP closed captioning complaints. The required contact information includes the name of a person with primary responsibility for IP closed captioning complaints and who can ensure compliance with the rules, as well as the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. VPDs shall keep this information current and update it within 10 business days of any change. 47 C.F.R. § 79.4(c)(2)(iii).
- Mechanism for information on video programming subject to the CVAA
 - Each VPO and each VPD to which the VPO has provided or will provide video programming for IP delivery must agree upon a "mechanism" that will inform the VPD of which programming is subject to the IP closed captioning requirements on an ongoing basis. 47 C.F.R. §§ 79.4(c)(1)(ii), 79.4(c)(2)(ii).
 - VPDs must make a good faith effort to identify video programming subject to the IP closed captioning requirements using the agreed upon mechanism. 47 C.F.R. § 79.4(c)(2)(ii).

- A VPD may rely in good faith on a certification by a VPO that the video programming need not be captioned if (47 C.F.R. §§ 79.4(c)(2)(ii)(A)-(B)):
 - The certification includes a clear and concise explanation of why captioning is not required; and
 - The VPD is able to produce the certification to the Commission in the event of a complaint.
- Schedule of deadlines. Closed captions are required for all nonexempt full-length IP-delivered video programming if the programming is published or exhibited on television in the United States with captions on or after the following dates (47 C.F.R. § 79.4(b)):
 - (1) September 30, 2012, for all prerecorded programming that is not edited for Internet distribution, unless it is subject to (4) below.
 - (2) March 30, 2013, for all live and near-live programming, unless it is subject to (4) below.
 - (3) September 30, 2013, for all prerecorded programming that is edited for Internet distribution, unless it is subject to (4) below.
 - (4) All programming that is already in the VPD's library before it is shown on television with captions must be captioned:
 - Within 45 days after the date it is shown on television with captions on or after March 30, 2014 and before March 30, 2015.
 - Within 30 days after the date it is shown on television with captions on or after March 30, 2015 and before March 30, 2016.
 - Within 15 days after the date it is shown on television with captions on or after March 30, 2016.

3. Procedures for Exemptions from the Requirements of Section 202(b) of the CVAA

- VPDs and VPOs may petition the Commission on a case-by-case basis for a full or partial exemption of their IP closed captioning obligations.
 - The Commission may grant such a petition upon a finding that the requirements would be economically burdensome. 47 C.F.R. § 79.4(d)(1).
 - The term “economically burdensome” means imposing significant difficulty or expense. 47 C.F.R. § 79.4(d)(2).
- The Commission will consider the following factors when determining whether the IP closed captioning requirements would be economically burdensome (47 C.F.R. §§ 79.4(d)(2)(i)-(iv)):
 - The nature and cost of the closed captions for the programming;
 - The impact on the operation of the VPD or VPO;
 - The financial resources of the VPD or VPO; and
 - The type of operations of the VPD or VPO.
- The petitioner must also describe any other factors it deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the IP closed captioning requirements. 47 C.F.R. § 79.4(d)(3).

- The petitioner must file its petition for exemption, and all subsequent pleadings related to the petition, electronically. 47 C.F.R. § 79.4(d)(4).
- Any interested person may electronically file comments or oppositions to the petition within 30 days after release of the public notice of the petition, and within 20 days after the close of the period for filing comments or oppositions, the petitioner may reply to any comments or oppositions filed. 47 C.F.R. § 79.4(d)(6).
- Persons who file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must include a certification that the petitioner was served with a copy. Any petitioner filing a reply to comments or oppositions must serve the commenting or opposing party with a copy of the reply and shall include a certification that the party was served with a copy. 47 C.F.R. § 79.4(d)(7).
- Those filing petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on. 47 C.F.R. § 79.4(d)(9).
- During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the IP closed captioning requirements. 47 C.F.R. § 79.4(d)(11).

4. Procedures for Complaints Alleging that a VPO or VPD Violated the Requirements

- Complaints concerning an alleged violation of the IP closed captioning requirements shall be filed in writing with the Commission or with the VPD responsible for enabling the rendering or pass through of the closed captions for the video programming within 60 days after the date the complainant experienced a problem with captioning. A complaint filed with the Commission must be directed to the Consumer and Governmental Affairs Bureau and submitted through the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or facsimile. 47 C.F.R. § 79.4(e)(1).
- A complaint should include (47 C.F.R. § 79.4(e)(2)):
 - The name, postal address, and other contact information of the complainant, such as telephone number or e-mail address;
 - The name and postal address, website, or e-mail address of the VPD and/or VPO against which the complaint is alleged, and information sufficient to identify the video programming involved;
 - Information sufficient to identify the software or device used to view the program;
 - A statement of facts sufficient to show that the VPD and/or VPO has violated or is violating the Commission's rules, and the date and time of the alleged violation;
 - The specific relief or satisfaction sought by the complainant; and
 - The complainant's preferred format or method of response to the complaint.
- If a complaint is filed first with the Commission, the Commission will forward complaints satisfying the procedural requirements referenced above to the named VPD and/or VPO, as well as to any other VPD and/or VPO that Commission staff determines may be involved. The VPD and/or VPO must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission. 47 C.F.R. § 79.4(e)(3).
- If a complaint is filed first with the VPD, the VPD must respond in writing to the complainant within 30 days after receipt of a closed captioning complaint. 47 C.F.R. § 79.4(e)(4).

- If a VPD fails to respond to the complainant within 30 days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within 30 days after the time allotted for the VPD to respond. 47 C.F.R. § 79.4(e)(4).
- If a consumer re-files the complaint with the Commission (after filing with the VPD) and the complaint satisfies the procedural requirements referenced above, the Commission will forward the complaint to the named VPD, as well as to any other VPD and/or VPO that Commission staff determines may be involved. The VPD and/or VPO must then respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission. 47 C.F.R. § 79.4(e)(4).
- In response to a complaint, VPDs and/or VPOs shall file with the Commission sufficient records and documentation to prove that the responding entity was (and remains) in compliance with the Commission’s rules. If the responding entity admits that it was not or is not in compliance with the Commission’s rules, it shall file with the Commission sufficient records and documentation to explain the reasons for its noncompliance, show what remedial steps it has taken or will take, and show why such steps have been or will be sufficient to remediate the problem. 47 C.F.R. § 79.4(e)(5).

5. Devices Covered, Exceptions, and Exemptions

- All devices that are designed to receive or play back video programming must support closed captioning. 47 C.F.R. § 79.103(a). This includes devices with screens of any size, as well as those devices that do not have a screen at all, such as set-top boxes. Covered devices are not limited to those devices which receive programming via IP, but also include traditional television receivers (including those that use a screen less than 13 inches in size), DVD and Blu-ray players, and devices capable of recording video programming.
 - Devices are considered “designed” to record or display video programming if they are *capable of* recording or displaying video programming.
 - Several broad categories of devices are exempted from this definition. Specifically, display-only monitors with no playback capability are exempted, whether they receive a compressed video stream (via, for example, Ethernet) or uncompressed video stream (via HDMI or DVI). 47 C.F.R. § 79.103(b)(1). Also, professional and commercial equipment not generally used by the public is exempted from this definition. 47 C.F.R. § 79.103(b)(2).
- Where manufacturers believe that it is inappropriate or impossible for their devices to support closed captioning, they may make use of one or more of the following exemptions.
 - Receive and playback devices, but not recording devices, are not required to support closed captioning if it is *not technically feasible* to do so. 47 C.F.R. § 79.103(a). For it not to be technically feasible to support closed captioning on a device, it must be more than merely “difficult” to include closed captioning, and must require engineering a fundamentally different device.
 - Receive and playback devices with screens less than 13 inches in size and recording devices need only support closed captioning if doing so is *achievable*. 47 C.F.R. §§ 79.103(a), 79.103(b)(3)(i), 79.104(a). Achievability is defined as “with reasonable effort or expense,” and consists of a four factor test. 47 C.F.R. § 79.103(b)(3)(ii). Manufacturers may show, for the specific device, that as a result of (i) the nature and cost of the steps needed to implement closed captioning, (ii) the technical and economic impact on the operations of the manufacturer or provider, (iii) the type of operations of

- the manufacturer or provider, and (iv) the extent to which the service provider or manufacturer offers other closed captioning enabled devices at differing price points, it is not achievable to implement closed captioning. 47 C.F.R. §§ 79.103(b)(3)(ii)(A)-(D).
- Receive and playback devices, but not recording devices, may ask the Commission for a *purpose-based waiver* of the closed captioning rules, stating that while their device is capable of receiving video programming, either (47 C.F.R. § 79.103(b)(4)):
 - The device is a single-purpose device primarily designed for a purpose other than receiving or playing back video programming, and the reception of receiving or playing back video programming is merely incidental, or
 - The device is a multi-purpose device, but receiving or playing back video programming is not one of the uses which comprise the device’s “essential utility.”
 - Manufacturers are not required to petition the Commission for a determination that it is *not technically feasible* or *achievable* to support closed captioning, though they may do so, but are permitted to assert a “lack of technical feasibility” or a “lack of achievability” as a defense to a complaint. However, manufacturers seeking a waiver under one of the two purpose-based waiver provisions must do so prior to manufacturing or importing their devices, as the purpose-based waivers are not available as defenses to a complaint, without having first obtained a waiver from the Commission.
 - Finally, the Commission considers closed captioning obligations discussed below separable. Therefore, manufacturers are instructed to seek relief from the Commission’s rules for the feature or features that they find not technically feasible or not achievable and to implement the feature or features that are.
 - In the *Order on Reconsideration*, pursuant to the purpose-based waiver provision, the Commission granted a waiver for the following two classes of apparatus: (1) devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and the Commission’s rules, and that have limited capability to display video programming transmitted simultaneously with sound (*e.g.*, digital still cameras, digital video cameras, baby monitors, security cameras, digital video camera microscopes, digital playback binoculars, and digital probes for viewing and playing video of enclosed spaces); and (2) devices that are primarily designed to display still images and that have limited capability to display video programming transmitted simultaneously with sound (*e.g.*, digital picture frames).

6. Obligations of Covered Devices

- Receive and playback devices are required to support the CEA-708, or closed captioning for digital broadcast television, feature-set when implementing closed captioning, but not the CEA-708 standard itself (except for digital television receivers). The required features include (47 C.F.R. § 79.103(c)):
 - Support for setting the color of the font, window, and background;
 - Support for setting the opacity of the text, window, and background;
 - Support for the various fonts in CEA-708;

- Support for the various character edge attributes, such as raised, depressed, uniform, drop shadow, and none;
 - Support for multiple language tracks, and identifying “easy reader” tracks as such; and
 - Support for consumers to control the display of captioning, including the ability to turn it on and off, change the appearance of the captioning, preview their setting changes, and remembering settings between viewing sessions.
- Recording devices are required to store captions, and to store those captions so that viewers are able to turn them on and off during playback. 47 C.F.R. § 79.104(b).
 - Receive, playback, and recording devices which interconnect with other devices are required either to render or pass-through closed captioning on every output of the device. 47 C.F.R. §§ 79.103(d), 79.104(c). Rendering requires opening the captions in the receiving device, complying with the requirements above, and giving users control of the captioning functionality. Passing-through the captions requires passing through all of the caption data, such that later devices can meet the requirements above.
 - The use of the SMPTE-TT standard is considered a safe harbor for devices. 47 C.F.R. § 79.103(c)(11). Where a device implements SMPTE-TT to enable the display and functionality described above, it will be deemed in compliance with the Commission’s IP closed captioning rules. Devices may implement, and are encouraged to implement, additional closed captioning standards to achieve the greatest compatibility possible between content and players.

7. **Manufacturer Deadlines and Complaints**

- The deadline for manufacturers to comply with our rules for the devices they manufacture is January 1, 2014, which is approximately two years from the date the rules were adopted. 47 C.F.R. §§ 79.103(a), 79.104(a).
 - In the *Order on Reconsideration*, the Commission clarified that the deadline refers only to the date of manufacture, and not to the date of importation, shipment, or sale.
- In the *Order on Reconsideration*, the Commission temporarily extended the compliance deadline for DVD players that do not render or pass through closed captions and for Blu-ray players, pending resolution of the *Further Notice of Proposed Rulemaking* on this issue.
- Consumers are encouraged to file complaints with the Commission should they become aware of manufacturers which are not in compliance with the rules. The Commission will manage the resolution of complaints, contacting the manufacturer when necessary, and resolving complaints where prior determinations of technical feasibility, achievability, waiver, or alternate means of compliance have been made.

8. **Alternate Means of Compliance**

- An entity may meet these requirements of the CVAA through alternate means than those prescribed by Commission regulations. Should an entity seek to use an “alternate means” to comply, it may either:
 - (i) Request a Commission determination that the proposed alternate means satisfies the statutory requirements; or
 - (ii) Claim in defense to a complaint or enforcement action that the Commission should determine that the party’s actions were permissible alternate means of compliance.

RECORDKEEPING

- **For VPDs and VPOs.** As detailed above, the *Report and Order* adopts certain rules that may have recordkeeping implications for VPDs and/or VPOs, including the requirements pertaining to VPD contact information, the agreed upon mechanism, the filing of petitions requesting exemptions due to economic burden, and complaint procedures.
- **For Manufacturers of Devices.** As detailed above, the *Report and Order* adopts certain rules that may have recordkeeping implications for manufacturers of devices, specifically, the filing of petitions requesting exemptions and determinations due to technical feasibility, achievability, and waivers, as well as complaint procedures.

IMPACT ON SMALL BUSINESS

- The *Report and Order* adopts procedures enabling the Commission to grant exemptions to the rules governing closed captioning of IP-delivered video programming pursuant to Section 202 of the CVAA, where a petitioner has shown that compliance would present an economic burden, and pursuant to Section 203 of the CVAA, where a petitioner has shown that compliance is not achievable or technically feasible. This exemption process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, the *Report and Order* provides that a *de minimis* failure to comply with the requirements adopted pursuant to Section 202 of the CVAA shall not be treated as a violation, and it provides that parties may use alternate means of compliance to the rules adopted pursuant to either Section 202 or Section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

INTERNET LINKS

- Report and Order – FCC 12-9

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-9A1.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-9A2.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-9A3.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-9A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-9A1.txt

- Order on Reconsideration – FCC 13-84

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-84A1.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-84A2.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-84A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-84A1.txt