

PUBLIC NOTICE

Federal Communications Commission
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MEDIA BUREAU SEEKS TO REFRESH THE RECORD ON ACCESSIBILITY RULES FOR CLOSED CAPTIONING DISPLAY SETTINGS UNDER THE TELEVISION DECODER CIRCUITRY ACT

MB Docket No. 12-108

Comments Due: [30 days after publication in the Federal Register]

Reply Comments Due: [45 days after publication in the Federal Register]

With this Public Notice, the Media Bureau seeks to refresh the record on proposed rules intended to enable individuals who are deaf and hard of hearing to fully enjoy video programming through closed captioning.¹ Specifically, in 2015, the Commission proposed rules that would require manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing and asked commenters to address the Commission's authority to adopt such rules under the Television Decoder Circuitry Act of 1990 (TDCA).² The comment period closed nearly six years ago.³ To ensure that the Commission has the benefit of current information, including any developments relating to these issues since the release of the underlying *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, we invite parties to update the record on these issues.

Background. The TDCA amended the Communications Act of 1934, as amended (the Act), to require that television receivers contain built-in decoder circuitry designed to display closed captioning and to require that the Commission's rules provide performance and display standards for such built-in decoder circuitry.⁴ In 2000, the Commission adopted such standards for the display of closed captions on digital television receivers. These standards allow users to customize the appearance of captions by changing the font, size, color, and other features of captions.⁵

¹ *Second Further Notice of Proposed Rulemaking. Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914, 13932-35, paras. 33-40 (2015) (*Second Further Notice*).

² Television Decoder Circuitry Act of 1990, Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)) (TDCA); *Second Further Notice*, 30 FCC Rcd at 13932-35, paras. 33-40.

³ Comments in response to the *Second Further Notice* were due by February 24, 2016, and reply comments were due by March 7, 2016. *Notice of Effective Date of Second Accessible User Interfaces Order; Announcement of Comment and Reply Comment Deadlines for Accompanying Second Further Notice of Proposed Rulemaking*, MB Docket No. 12-108, Public Notice, 31 FCC Rcd 960 (MB 2016).

⁴ TDCA, § 3, 4; 47 U.S.C. §§ 303(u), 330(b).

⁵ *Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, ET Docket No. 99-254, MM Docket No. 95-176, Report and Order, 15 FCC Rcd 16788, 16791-95, paras. 7-19 (2000) (*DTV Closed Captioning Order*).

In 2010, Congress enacted the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to enable individuals with disabilities to fully utilize modern communications services and equipment and to better access video programming.⁶ The CVAA broadened the application of closed captioning display and functionality requirements to additional types of apparatus, beyond broadcast television receivers, to include any “apparatus designed to receive or play back video programming transmitted simultaneously with sound.”⁷ Pursuant to the CVAA, in 2012, the Commission adopted performance and display standards for the broadened category of covered apparatus and in particular adopted functional requirements to ensure that consumers can modify caption display features on covered apparatus.⁸ These rules require that apparatus provide functionality that allows users to change the presentation, color, opacity, size, and font of captions, caption background color and opacity, character edge attributes, and caption window color. But the rules do not mandate the means by which users access such features on the covered apparatus.⁹

In 2015, the Commission issued the *Second Further Notice* in the above docket, seeking comment on proposed rules that would require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus.¹⁰ Both industry and consumer advocates, as well as individual consumers, filed comments in the proceeding.¹¹

Since the Commission last invited comment on these issues, consumers and other stakeholders have raised ongoing concerns about difficulties consumers face when attempting to access closed captioning display settings across a host of technologies and services. For instance, the Commission has received consumer complaints regarding user interfaces and the difficulty of adjusting closed captioning settings.¹² Furthermore, comments received earlier this year in response to a related public notice

⁶ See generally Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (CVAA); Pub. L. No. 111-265 (technical amendments to CVAA).

⁷ CVAA, § 203(a); 47 U.S.C. § 303(u)(1).

⁸ 47 CFR § 79.103(c). See also *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, Report and Order, 27 FCC Rcd 787, 850-54, paras. 109-13 (2012) (*IP Closed Captioning Order*).

⁹ See 47 CFR § 79.103(c).

¹⁰ See *Second Further Notice*, 30 FCC Rcd at 13932-35, paras. 33-40. The Commission also sought comment on its authority under the TDCA to adopt such requirements. *Second Further Notice*, 30 FCC Rcd at 13932-33, paras. 33-35. Previously, in the *Further Notice of Proposed Rulemaking* in this docket, the Commission inquired whether sections 204 and 205 of the CVAA provide the Commission with authority to adopt such a requirement. See *User Interfaces, and Video Programming Guides and Menus; 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17415, para. 140 (2013) (*Report and Order and Further Notice*).

¹¹ See, e.g., Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Hearing Loss Association of America, Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (Consumer Groups), MB Docket No. 12-108 (rec. Feb. 24, 2016); Comments of the Consumer Technology Association (CTA), MB Docket No. 12-108 (rec. Feb. 24, 2016); Reply Comments of EchoStar Technologies Corporation, MB Docket No. 12-108 (rec. Mar. 7, 2016); Reply Comments of American Cable Association, MB Docket No. 12-108 (rec. Mar. 7, 2016).

¹² See, e.g., Complaint No. 3729169 (Feb. 6, 2020) (“[My provider] does not give me an option to control the size of font and color of the caption through tv. The caption is so small and it’s hard to read.”); Complaint No. 4020061 (June 10, 2020) (“[I] cannot control caption position on the tv screen, the caption font changes at random, the ‘large font’ setting does not produce sufficiently large captioned text.”).

concerning the Commission's implementation of the CVAA suggest that these issues persist.¹³ Most recently, at a forum co-hosted by the Media Bureau and the Consumer and Governmental Affairs Bureau, panelists detailed the discoverability and ease of use challenges posed by closed captioning display settings across an increasingly fragmented video programming hardware and software environment.¹⁴

Request for Additional Comment. Accordingly, the Media Bureau invites all stakeholders to update the record after reviewing the specific proposals, underlying analysis, and questions contained in the *Second Further Notice*,¹⁵ as well as the existing record in this proceeding. The *Second Further Notice* presented a host of issues that generated substantive discussion, including the Commission's authority pursuant to the TDCA to require that closed captioning display settings be readily accessible,¹⁶ the means by which the Commission would implement a requirement that consumers be able to readily access user display settings for closed captioning,¹⁷ and the extent to which section 303(u)(1)¹⁸ could be a source of authority to impose closed captioning requirements to all apparatus, as interpreted consistently with Commission precedent.¹⁹ The *Second Further Notice* further asked which entities should be responsible for compliance and, specifically, whether both manufacturers and MVPDs should be obligated to facilitate the ability of consumers to locate and control closed captioning display settings.²⁰ The *Second Further Notice* also sought comment on the appropriate timeframe for requiring covered entities to ensure that closed captioning display settings are made readily accessible to consumers.²¹ Herein, we specifically seek updated comment on these and other issues posed in the *Second Further Notice*.

Commenters are welcome to submit new or additional relevant information about the current state of the availability of hardware and software solutions designed to facilitate the activation and

¹³ Accessibility Advocacy and Research Organizations Comments, GN Docket No. 21-140, 43 (rec. June 7, 2021) (“As many of the Accessibility Advocacy and Research Organizations noted in our comments on the [*Second Further Notice*], the Commission indeed possesses the authority to require the availability and accessibility of caption settings under the TDCA, and should act swiftly to complete the proceeding initiated in [the *Second Further Notice*].”). See *Consumer and Governmental Affairs, Media, and Wireless Telecommunications Bureaus Seek Update on Commission's Fulfillment of the Twenty-First Century Communications and Video Accessibility Act*, GN Docket No. 12-140, Public Notice, 36 FCC Rcd 7108 (CGB, MB, and WCB 2021).

¹⁴ See *FCC Announces Forum on Improving Accessibility of Online Video Programming*, GN Docket No. 12-140, Public Notice, DA 21-1452 (MB and CGB 2021); see also FCC, Video Programming Accessibility Forum – Online Closed Captioning, <https://www.fcc.gov/news-events/events/2021/12/video-programming-accessibility-forum-online-closed-captioning> (last visited Jan. 10, 2022).

¹⁵ *Second Further Notice*, 30 FCC Rcd at 13932-35, paras. 33-40.

¹⁶ *Id.* at 13932-34, paras. 33-35.

¹⁷ *Id.* at 13934, para. 37. Specifically, the *Second Further Notice* sought comment on whether, to ensure that closed captioning display settings are readily accessible, the Commission should require that they be included in the menu no lower than the first level of options, or whether there are alternative means to implement this requirement. *Id.*

¹⁸ Section 303(u) applies specifically to 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. 47 U.S.C. § 303(u)(1).

¹⁹ *Second Further Notice*, 30 FCC Rcd at 13935, para. 39. See 47 U.S.C. § 303(u)(1); *IP Closed Captioning Order*, 27 FCC Rcd at 839-43, paras. 93-96. During the initial comment period, some commenters argued that the Commission's authority with respect to the TDCA is limited to the accessibility of broadcast television receivers. Comments of AT&T Services, Inc., MB Docket No. 12-108, at 1-2 (rec. Feb. 24, 2016); Comments of Consumer Technology Association, MB Docket No. 12-108, at 3 (rec. Feb. 24, 2016). *But see* Reply Comments of Consumer Groups and RERC, MB Docket No. 12-108, at 7, 10 (rec. Mar. 7, 2016) (agreeing with the Commission that the TDCA provides ample authority to apply a rule broadly to the full range of devices covered by section 303(u)).

²⁰ *Second Further Notice*, 30 FCC Rcd at 13935, para. 39.

²¹ *Id.* at 13935, para. 40.

customization of closed captioning, and its ease of use. For example, to what extent are manufacturers and MVPDs currently “making caption display settings accessible via mechanisms reasonably comparable to a button, key, or icon,” such as “a button on the remote or access through the first level of a menu,” as noted in the *Second Further Notice*?²²

Initial Regulatory Flexibility Analysis. The *Second Further Notice* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposals.²³ We invite parties to file comments on the IRFA in light of this request to refresh the record.

Ex Parte Rules. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Filing Requirements. All filings responsive to this Public Notice must reference MB Docket No. 12-108. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

²² See *id.* at 13935, para. 38 (quoting a March 2015 letter reporting the intentions of TV manufacturers); see also CVAA, §§ 204(a), 205(a) (providing for access to closed captioning capabilities through a mechanism “reasonably comparable to a button, key, or icon”); 47 CFR § 79.109(a)(1) (requiring manufacturers of covered apparatus to “ensure that closed captioning can be activated through a mechanism that is reasonably comparable to a button, key, or icon”).

²³ *Second Further Notice*, 30 FCC Rcd at 13936, para. 42.

²⁴ *Id.* at 13936-37, para. 46. See 47 CFR § 1.1200 *et seq.*

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For additional information, contact Michael Scurato, Michael.Scurato@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2083.

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