

language for onscreen guides or menus, etc.).

(vi) *Configuration—CC Control*. Function that allows the user to enable or disable the display of closed captioning.

(vii) *Configuration—CC Options*. Function that allows the user to modify the display of closed caption data (e.g., configuration of the font size, font color, background color, opacity, etc.).

(viii) *Configuration—Video Description Control*. Function that allows the user to enable or disable the output of video description (i.e., allows the user to change from the main audio to the secondary audio stream that contains video description, and from the secondary audio stream back to the main audio).

(ix) *Display Configuration Info*. Function that allows the user to display how user preferences are currently configured.

(x) *Playback Functions*. Function that allows the user to control playback functions (e.g., pause, play, rewind, fast forward, stop, and record).

(xi) *Input Selection*. Function that allows the user to select their preferred input source.

(b) *Compliance deadline*. Compliance with the requirements of this section is required no later than December 20, 2016; except that compliance with the requirements of this section is required no later than December 20, 2021 for the following digital apparatus:

(1) Display-only monitors and video projectors;

(2) 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 § 79.4(a)(1) of this part, and that have limited capability to display video programming transmitted simultaneously with sound; and

(3) Devices that are primarily designed to display still images and that have limited capability to display video programming transmitted simultaneously with sound.

(c)(1) *Achievable*. Manufacturers of digital apparatus:

(i) May file a petition seeking a determination from the Commission, pursuant to § 1.41 of this chapter, that

compliance with the requirements of this section is not achievable, which the Commission may grant upon a finding that such compliance is not achievable, or

(ii) May raise as a defense to a complaint or Commission enforcement action that a particular digital apparatus does not comply with the requirements of this section because compliance was not achievable, and the Commission may dismiss a complaint or Commission enforcement action upon a finding that such compliance is not achievable.

(2) The petitioner or respondent must support a petition filed pursuant to paragraph (c)(1) of this section or a response to a complaint or Commission enforcement action with sufficient evidence to demonstrate that compliance with the requirements of this section is not “achievable.” “Achievable” means with reasonable effort or expense. The Commission will consider the following factors when determining whether compliance with the requirements of this section is not “achievable” under the factors set out in 47 U.S.C. 617(g):

(i) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(ii) 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 development and deployment of new communications technologies;

(iii) The type of operations of the manufacturer or provider; and

(iv) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

EFFECTIVE DATE NOTE: At 78 FR 77251, Dec. 20, 2013, § 79.107 was added. Paragraph (c) of this section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 79.108 Video programming guides and menus provided by navigation devices.

(a)(1) Manufacturers that place navigation devices, as defined by § 76.1200 of

this chapter, into the chain of commerce for purchase by consumers, and multichannel video programming distributors (“MVPDs”) as defined by § 76.1200 of this chapter that lease or sell such devices must ensure that the on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming are audibly accessible in real time upon request by individuals who are blind or visually impaired. Manufacturers and MVPDs must comply with the provisions of this section only if doing so is achievable as defined in § 79.108(c)(2).

NOTE 1 TO PARAGRAPH (a)(1): This paragraph places no restrictions on the importing, shipping, or sale of navigation devices manufactured before the applicable compliance deadline for this section.

NOTE 2 TO PARAGRAPH (a)(1): In determining whether a particular device is considered a “navigation device” subject to the requirements of this section, the Commission will look to the device’s built-in functionality at the time of manufacture.

(2) The following functions are used for the display or selection of multichannel video programming and must be made audibly accessible by manufacturers of navigation devices and MVPDs covered by this section when included in a navigation device and accessed through on-screen text menus or guides:

(i) *Channel/Program Selection*. Function that allows the user to select channels and programs (e.g., via physical numeric or channel up/channel down buttons or via on screen guides and menus).

(ii) *Display Channel/Program Information*. Function that allows the user to display channel or program information.

(iii) *Configuration—Setup*. Function that allows the user to access and change configuration or setup options (e.g., configuration of video display and audio settings, selection of preferred language for onscreen guides or menus, etc.).

(iv) *Configuration—CC Control*. Function that allows the user to enable or disable the display of closed captioning.

(v) *Configuration—CC Options*. Function that allows the user to modify the display of closed caption data (e.g.,

configuration of the font size, font color, background color, opacity, etc.).

(vi) *Configuration—Video Description Control*. Function that allows the user to enable or disable the output of video description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains video description, and from the secondary audio stream back to the main audio).

(vii) *Display Configuration Info*. Function that allows the user to display how user preferences are currently configured.

(viii) *Playback Functions*. Function that allows the user to control playback functions (e.g., pause, play, rewind, fast forward, stop, and record).

(ix) *Input Selection*. Function that allows the user to select their preferred input source.

(3) Manufacturers of navigation devices and MVPDs covered by this section must ensure that the following functions are made accessible, as defined by § 79.107(a)(3), to individuals who are blind or visually impaired:

(i) *Power On/Off*. Function that allows the user to turn the device on or off.

(ii) *Volume Adjust and Mute*. Function that allows the user to adjust the volume and to mute or un-mute the volume.

(4) With respect to navigation device features and functions:

(i) Delivered in software, the requirements set forth in this section shall apply to the manufacturer of such software; and

(ii) Delivered in hardware, the requirements set forth in this section shall apply to the manufacturer of such hardware.

(5) Manufacturers of navigation devices and MVPDs covered by this section must permit a requesting blind or visually impaired individual to request an accessible navigation device through any means that such covered entities generally use to make available navigation devices to other consumers. Any such means must not be more burdensome to a requesting blind or visually impaired individual than the means required for other consumers to obtain navigation devices. A manufacturer that provides navigation

devices at retail to requesting blind or visually impaired consumers must make a good faith effort to have retailers make available compliant navigation devices to the same extent they make available navigation devices to other consumers generally.

(6) Manufacturers of navigation devices and MVPDs covered by this section must provide an accessible navigation device to a requesting blind or visually impaired individual within a reasonable time, defined as a time period comparable to the time that such covered entities generally provide navigation devices to other consumers.

(7) *Compliance through the use of separate equipment or software.* Manufacturers of navigation devices and MVPDs covered by this section may comply with the requirements of paragraphs (a)(1) through (a)(3) of this section through the use of software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution, and shall have maximum flexibility to select the manner of compliance. An entity that chooses to comply with paragraphs (a)(1) through (a)(3) of this section through the use of separate equipment or software must:

(i) Ensure that any software, peripheral device, equipment, service or solution relied upon achieves the accessibility required by this section. If a navigation device has any functions that are required to be made accessible pursuant to this section, any separate solution must make all of those functions accessible or enable the accessibility of those functions.

(ii) Provide any software, peripheral device, equipment, service or solution in a manner that is not more burdensome to a requesting blind or visually impaired individual than the manner in which such entity generally provides navigation devices to other consumers.

(iii) Provide any software, peripheral device, equipment, service or solution at no additional charge.

(iv) Provide any software, peripheral device, equipment, service or solution within a reasonable time, defined as a time period comparable to the time that such entity generally provides navigation devices to other consumers.

(8) Manufacturers of navigation devices and MVPDs covered by this section shall only be responsible for compliance with the requirements of this section with respect to navigation devices that such covered entities provide to a requesting blind or visually impaired individual.

(b) *Compliance deadline.* Compliance with the requirements of this section is required no later than December 20, 2016; except that compliance with the requirements of this section is required no later than December 20, 2018 for the following covered entities:

(1) MVPD operators with 400,000 or fewer subscribers as of year-end 2012; and

(2) MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012.

(c)(1) *Achievable.* MVPDs and manufacturers of navigation device hardware or software:

(i) May file a petition seeking a determination from the Commission, pursuant to §1.41 of this chapter, that compliance with the requirements of this section is not achievable, which the Commission may grant upon a finding that such compliance is not achievable, or

(ii) May raise as a defense to a complaint or Commission enforcement action that a particular navigation device does not comply with the requirements of this section because compliance was not achievable, and the Commission may dismiss a complaint or Commission enforcement action upon a finding that such compliance is not achievable.

(2) The petitioner or respondent must support a petition filed pursuant to paragraph (c)(1) of this section or a response to a complaint or Commission enforcement action with sufficient evidence to demonstrate that compliance with the requirements of this section is not “achievable.” “Achievable” means with reasonable effort or expense. The Commission will consider the following factors when determining whether compliance with the requirements of this section is not “achievable” under the factors set out in 47 U.S.C. 617(g):

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(i) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(ii) 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 development and deployment of new communications technologies;

(iii) The type of operations of the manufacturer or provider; and

(iv) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(d) *MVPD notices*. Covered MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows:

(1) When providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices.

(2) MVPDs must provide notice on their official Web sites about the availability of accessible navigation devices. MVPDs must prominently display information about accessible navigation devices and separate solutions on their Web sites in a way that makes such information available to all current and potential subscribers. The notice must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. All information required by this section must be provided in a Web site format that is accessible to people with disabilities.

(e) *Verification of eligibility*. Entities covered by this section may only require consumer verification of eligibility as an individual who is blind or visually impaired to the extent the entity chooses to rely on an accessibility solution that involves providing the consumer with sophisticated equip-

ment and/or services at a price that is lower than that offered to the general public. In this situation, entities covered by this section must allow a consumer to provide a wide array of documentation to verify eligibility for the accessibility solution provided. Entities covered by this section that choose to require verification of eligibility must comply with the requirements of 47 U.S.C. 338(i)(4)(A) and 47 U.S.C. 631(c)(1) to protect personal information gathered from consumers through their verification procedures.

EFFECTIVE DATE NOTE: At 78 FR 77251, Dec. 20, 2013, § 79.108 was added. Paragraphs (a)(5) and (c) through (e) of this section contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 79.109 Activating accessibility features.

(a) *Requirements applicable to digital apparatus*. (1) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, with built-in closed-captioning capability must ensure that closed captioning can be activated through a mechanism that is reasonably comparable to a button, key, or icon. Digital apparatus do not include navigation devices as defined in § 76.1200 of this chapter.

(2) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, with built-in video description capability must ensure that video description can be activated through a mechanism that is reasonably comparable to a button, key, or icon. Digital apparatus do not include navigation devices as defined in § 76.1200 of this chapter.

NOTE 1 TO PARAGRAPH (a): The term digital apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted in digital