

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Accessibility of User Interfaces, and Video
Programming Guides and Menus
MB Docket No. 12-108

MEMORANDUM OPINION AND ORDER

Adopted: September 25, 2017

Released: September 25, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a petition filed by Fiat Chrysler Automobiles US LLC (FCA US) requesting that the Federal Communications Commission grant a waiver of the Commission's rules requiring the accessibility of user interfaces on covered digital apparatus on certain FCA US vehicles. Specifically, FCA US requests a retroactive waiver of Sections 79.107(a)(1)-(2) and 79.107(b) of the Commission's rules for certain vehicles that were manufactured without an accessible rear entertainment system and that have been or will be updated with an accessibility solution before being sold to consumers. FCA US also requests a permanent waiver of Sections 79.107(a)(1)-(2) and 79.107(b) for certain vehicles that were manufactured without an accessible rear entertainment system and that have already been sold to consumers. For the reasons set forth below, we grant the Petition, subject to the requirement that Petitioner notify all owners of affected vehicles of the availability of an accessibility solution within 30 days of grant of this Order.

II. BACKGROUND

2. On October 31, 2013, the Commission adopted rules pursuant to Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to make user interfaces and video programming guides and menus accessible on televisions, set-top boxes, and other devices used to view video programming. Manufacturers of covered digital apparatus are responsible

1 Fiat Chrysler Automobiles US LLC Amended Petition for Waiver of the Commission's Rules Requiring Accessibility of Video Programming (filed June 15, 2017) (Petition).

2 Covered digital apparatus are those that are manufactured in or imported for use in the United States and designed to receive or play back video programming transmitted in digital format simultaneously with sound, excluding navigation devices. See 47 U.S.C. § 303(aa)(1); 47 CFR § 79.107(a)(1).

3 As discussed herein, FCA US has begun to notify owners of the affected sold vehicles that they can bring the vehicles to an FCA US dealership to update the audio files on the rear entertainment system, which will make built-in functions on the device accessible to people who are blind or visually impaired. See infra Section III.

4 Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). See also 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).

5 47 CFR §§ 79.108-79.110. See Accessibility of 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, MB (continued....)

for compliance with accessible user interfaces rules for devices manufactured after December 20, 2016, subject to certain exceptions.⁷ Section 79.107 of the Commission's rules requires that such apparatus be designed, developed, and fabricated so that control of appropriate built-in functions (*i.e.*, those functions used for the reception, play back, or display of video programming) included in the apparatus are accessible to and usable by individuals who are blind or visually impaired, if achievable.⁸ In addition, Section 79.109 requires that digital apparatus with built-in closed captioning and/or video description capability include a mechanism that is reasonably comparable to a button, key, or icon for activating the closed captioning and video description.⁹ Manufacturers must also comply with information, documentation, and training and notification requirements to ensure that individuals with disabilities are aware of the availability of accessible digital apparatus and have ready access to information and support that will allow them to operate such devices.¹⁰

3. FCA US is a North American automaker headquartered in Auburn Hills, Michigan that designs, engineers, manufactures, and sells vehicles under the Chrysler, Dodge, Jeep, Ram, and FIAT brands.¹¹ According to FCA US, eight of its vehicle models in the United States are equipped with a rear-seat video system,¹² which allows rear-seated passengers to view video programming inside the vehicle. The company explains in its Petition that it closely coordinated with its vendors to incorporate accessible user interfaces on these devices in anticipation of the applicable December 20, 2016 deadline.¹³ However, as discussed below, approximately 7,176 Dodge Journey vehicles were manufactured without the accessibility required under Sections 79.107(a)(1)-(2) of the Commission's rules due to a supplier error.¹⁴ For the reasons discussed below, FCA US requests that the Commission grant a waiver of the

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Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (*Accessible User Interfaces Order*).

⁶ See *supra* note 2. The term "digital apparatus" includes the physical device and the video player(s) capable of displaying video programming transmitted in digital format simultaneously with sound that manufacturers install into the devices they manufacture before sale or direct consumers to install after sale, whether in the form of hardware, software, or a combination of both. See Note 1 to 47 CFR § 79.107(a)(1).

⁷ See 47 CFR §§ 79.107(b), 79.109(c); *Accessible User Interfaces Order*, 28 FCC Rcd at 17353-54, paras. 38-39. Certain categories of digital apparatus such as display-only monitors and video projectors and devices primarily designed for purposes other than displaying video programming are subject to a five-year deferred compliance deadline. 47 CFR § 79.107(b)(1)-(3).

⁸ 47 CFR § 79.107(a)(1)-(4).

⁹ *Id.* § 79.109(a)(1)-(2).

¹⁰ See *id.* § 79.107(a)(5) (defining "usable" to mean that "individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities"); *id.* § 79.107(d) (imposing information, documentation, and training requirements on manufacturers of digital apparatus); *id.* § 79.107(e) (imposing consumer notification requirements on manufacturers of digital apparatus that will require manufacturers to publicize the availability of accessible devices on their websites, and to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment). See generally *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015).

¹¹ Petition at 1. According to FCA US, the company shipped 2.6 million vehicles in 2016. *Id.* at 1.

¹² Those eight models include the Chrysler Pacifica, Dodge Grand Caravan, Dodge Durango, Jeep Compass, Jeep Patriot, Jeep Wrangler, Jeep Grand Cherokee, and Dodge Journey. *Id.* at 2-3. We use the terms "rear-seat video system" and "rear entertainment system" interchangeably.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 2.

accessible user interfaces requirements with respect to rear entertainment systems on the affected vehicles.¹⁵ The Media Bureau issued a Public Notice seeking comment on the Petition.¹⁶ No comments or replies were filed in response to the Public Notice. On August 22, 2017, a consortium of academic and consumer groups representing the deaf and hard of hearing community filed an *ex parte* letter indicating that they do not oppose FCA US's petition for waiver, but requesting that the Commission include certain clarifications, should it grant the waiver.¹⁷

4. We evaluate FCA US's waiver request pursuant to the general waiver authority in Section 1.3 of the Commission's rules.¹⁸ To waive a requirement for good cause, we must (1) explain why deviating from the general requirement serves the public interest, and (2) explain the nature of the special circumstances.¹⁹

III. DISCUSSION

5. We find that there is good cause to grant FCA US's requested waivers of the accessible user interfaces rules because they affect a relatively small number of Dodge Journey vehicles with rear-seat video systems that were inadvertently manufactured without the requisite CVAA accessibility for built-in functions, the company has made a concerted effort to bring the affected vehicles into compliance since becoming aware of the issue and has plans to quickly remedy all unsold vehicles, and owners of affected sold vehicles will be able to obtain a no-cost software update to make the rear-seat video system accessible to people who are blind or visually impaired.²⁰ Although supplier error generally does not constitute good cause for a waiver, we conclude that there are compelling special circumstances in the context of this specific waiver request that warrant a deviation from the general rule.²¹

¹⁵ *Id.* at 2-3.

¹⁶ See Public Notice, *Media Bureau Seeks Comment on Fiat Chrysler Automobiles US LLC Petition for Waiver of Accessible User Interfaces Requirements*, MB Docket No. 12-108, 32 FCC Rcd 5003 (2017).

¹⁷ Letter from Chris Laughlin, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 1-3 (filed Aug. 22, 2017) (Consumer Groups Aug. 22, 2017 *Ex Parte* Letter). The letter was submitted on behalf of TDI, Cerebral Palsy and Deaf Organization, Communication Service for the Deaf, Inc., Hearing Loss Association of America, National Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC) at Gallaudet University, and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) at Trace Research & Development Center.

¹⁸ 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”). We note that the Commission generally delegated authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider waiver requests of the rules adopted in the *Accessible User Interfaces Order*. *Accessible User Interfaces Order*, 28 FCC Rcd at 17423, para. 165. See 47 CFR §§ 0.61, 0.283, and 1.3.

¹⁹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁰ Petition at 2. See also Consumer Groups Aug. 22, 2017 *Ex Parte* Letter at 2 (noting that FCA US “took immediate remedial steps to correct the error once discovered,” including implementing processes to ensure that unsold vehicles are made compliant before they are sold, and automatically updating sold vehicles when they are brought to the dealer for any reason at no cost to the owner).

²¹ See Consumer Groups Aug. 22, 2017 *Ex Parte* Letter at 2 (asking the Commission to clarify “that ‘supplier error’ is not sufficient ‘good cause’ for a waiver in and of itself” and to “reiterate that waivers are granted only when ‘compelling special circumstances in the context of [a] specific waiver request . . . warrant a deviation from the general rule’”).

6. FCA US's waiver request applies to only one out of eight models that are offered with a rear entertainment option and represents a small percentage of the total number of FCA US vehicles equipped with rear-seat video systems that were manufactured after the CVAA compliance deadline.²² According to FCA US, the company coordinated with its vendors in anticipation of the applicable December 20, 2016 deadline to design and incorporate accessible user interfaces on rear-seat video systems in the eight FCA US vehicle models that offer rear entertainment.²³ Specifically, FCA US explains that its accessibility solution relies on software and audio files located in the vehicle's radio console and that it began timely installing radios equipped with the necessary files as of December 20, 2016.²⁴ However, according to FCA US, the company's supplier "inadvertently failed to equip radios designed for Dodge Journey vehicles with the video accessibility audio files" between January 3, 2017 and February 23, 2017.²⁵ Approximately 7,176 Dodge Journey vehicles equipped with rear-seat video devices manufactured during this timeframe were released to dealerships without the necessary audio files that enable accessibility of built-in functions for individuals who are blind or visually impaired.²⁶ This problem was not remedied until February 23, 2017, when FCA US became aware of the issue and resumed installing compliant radios.²⁷ At the time of FCA US's filing, 2,736 of the non-compliant vehicles released to dealerships remain in the possession of dealers,²⁸ and 4,440 have been sold.²⁹

7. *Retroactive Waiver for Unsold Vehicles.* We grant FCA US a retroactive waiver of Sections 79.107(a)(1)-(2) and 79.107(b) of the Commission's rules with respect to the 2,736 unsold vehicles, dating from January 3, 2017 to the date on which the vehicle is sold with accessible video capability.³⁰ We find that FCA US has made a concerted effort to identify the unsold vehicles and bring the vehicles into compliance before they enter the market.³¹ Specifically, FCA US explains that it undertook "extensive remediation efforts" upon learning of the non-compliance, including notifying its approximately 2,600 U.S. dealers about the issue, electronically flagging the Vehicle Identification Number (VIN) of the affected vehicles, and preventing its dealers from selling any unsold vehicles without first installing the video accessibility files.³² FCA US asserts that it has a technical solution at hand and the unsold vehicles can be remedied quickly by updating a computer code that enables audio accessibility.³³ According to the Petition, "no [Dodge Journey] dealer can sell a vehicle without first completing the necessary remedy because FCA US has flagged the affected vehicles and instructed

²² *Id.* at 5. Specifically, the 7,176 Dodge Journey vehicles with non-compliant rear-seat video systems represent 3.2 percent of the total number of FCA US vehicles equipped with rear-seat video systems that were manufactured between December 20, 2016 and June 2, 2017. *Id.*

²³ *Id.* at 1-2. *See also supra* note 12.

²⁴ Petition at 3.

²⁵ *Id.* at 3. This issue did not affect rear entertainment system accessibility on the Chrysler Pacifica, Dodge Grand Caravan, Dodge Durango, Jeep Compass, Jeep Patriot, Jeep Wrangler, and Jeep Grand Cherokee, which, according to FCA US, are fully compliant with the Commission's accessibility rules. *See id.* at 2-3.

²⁶ *Id.* at 2. *See* 47 CFR § 79.107(a)(1)-(2). FCA US indicates that the issue did not affect the requirement that built-in video description and closed captioning functions be accessible through a mechanism that is reasonably comparable to a button, key, or icon. *See* Petition at 3, 5; 47 CFR § 79.109(a)(1)-(2).

²⁷ Petition at 3.

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ *See id.* at 4.

³¹ *Id.*

³² *Id.* at 3.

³³ *Id.*

dealers to act as soon as possible to update the computer code and verify that the video accessibility feature functions.”³⁴

8. We find that grant of this waiver serves the public interest because all affected unsold vehicles will be remedied by FCA US’s dealers prior to sale, which means that all of these vehicles will be sold to consumers with rear-seat video systems that are fully accessible for individuals who are blind or visually impaired.³⁵ The company has already begun remedying the unsold vehicles and indicates in an update to its Petition that 812 of the 2,736 unsold vehicles have been updated, with a total of 1,924 vehicles awaiting updates.³⁶ FCA US maintains that it is “closely coordinating with its dealers to ensure that the unsold vehicles are remedied quickly and that no vehicle is sold without [] fully functioning video accessibility capability.”³⁷ Further, as noted above, the issue affects a relatively small number of vehicles, and no comments were filed opposing the request.³⁸

9. *Permanent Waiver for Sold Vehicles.* We also grant FCA US a permanent waiver of Sections 79.107(a)(1)-(2) and 79.107(b) of the Commission’s rules with respect to the 4,440 vehicles that have already been sold to consumers, subject to the condition that FCA US completes its consumer notification efforts within 30 days of grant of this Order.³⁹ We note that FCA US has already begun efforts to notify new owners of affected Dodge Journey vehicles that the rear entertainment systems are not fully accessible and that a solution is available at no charge to the vehicle owner.⁴⁰ FCA US maintains that it is “undertaking an extensive campaign” to ensure awareness of the video accessibility issue and to urge owners to revisit the dealership for the purpose of obtaining the complimentary accessibility update through both written notification and phone calls by customer service representatives.⁴¹ In particular, FCA US has sent a personalized letter to each of the new owners and indicates that it will begin to follow-up with telephone calls on September 12, 2017, to increase the likelihood of reaching the new owners.⁴² The company claims that FCA US’s dealers will install the requisite audio files into all of the sold vehicles that are brought in for service “regardless of the reason for the visit.”⁴³ However, FCA US asserts that it cannot compel vehicle owners to bring their vehicles into its dealerships and, therefore, requests a permanent waiver for the sold vehicles.⁴⁴

³⁴ *Id.* at 4.

³⁵ *Id.* Because FCA US has implemented processes to ensure that all affected unsold vehicles will be remedied to include the requisite audio file before sale, we do not think it is necessary “to require FCA US to instruct its dealers to update these vehicles as soon as possible rather than ‘just before sale during the pre-delivery process.’” *See* Consumer Groups Aug. 22, 2017 *Ex Parte* Letter at 3; Letter from Angela E. Giancarlo, Counsel for Fiat Chrysler Automobiles US LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 2 (filed Aug. 7, 2017) (Aug. 7, 2017 Update) (“[N]o dealer can sell a vehicle without first completing the necessary remedy.”).

³⁶ Aug. 7, 2017 Update at 2.

³⁷ Petition at 4.

³⁸ *See supra* para. 6.

³⁹ *See* Petition at 4-5. *See also* Consumer Groups Aug. 22, 2017 *Ex Parte* Letter at 2 (asking the Commission to clarify that the permanent waiver applies only to the approximately 4,400 Dodge Journey vehicles that were manufactured in January through February 2017 and sold before June 15, 2017, that were already identified by FCA US). We agree with Consumer Groups that, “should FCA US identify additional non-compliant vehicles, whether manufactured during that timeframe or not, it must seek another waiver.” *Id.*

⁴⁰ Petition at 6-7.

⁴¹ *Id.* at 4-5 & Exh. A (sample written notification).

⁴² *See* Aug. 7, 2017 Update at 2.

⁴³ Petition at 2.

⁴⁴ *Id.* at 2, 5.

10. With regard to the 4,440 sold vehicles, we find that a permanent waiver would serve the public interest because consumers have the option of returning to the dealership to obtain an accessibility solution quickly and at no cost, though some may choose to forgo this option. Thus, current owners of affected vehicles who need an audibly accessible rear-seat video system in their vehicle can obtain one. Further, the company maintains that it has notified the affected dealerships of the VIN numbers of the non-compliant vehicles, allowing dealerships to identify the non-compliant vehicles and quickly resolve the error regardless of the reason for the dealership visit and even if not specifically requested.⁴⁵ FCA US notes that over 70 percent of new owners typically return to the dealer sometime within the first year of purchase.⁴⁶ If that trend applies to the affected vehicles, then approximately 3,108 of the 4,440 sold vehicles could be updated during the first year of ownership.⁴⁷ Thus, even if a current owner does not have a need for accessibility, the rear-seat video system will be made accessible for individuals who are blind or visually impaired upon a visit to the dealership for any reason, assuring that many of the affected vehicles will be accessible to future owners upon resale. Further, as noted above, the issue affects a relatively small number of vehicles, and no comments were filed opposing the request.⁴⁸ FCA US indicates that it has already sent a letter informing the owners of the issue and urging them to visit dealerships to obtain the accessibility update.⁴⁹ As a condition of the waiver, the company must ensure that the follow-up phone calls by customer assistance personnel to new owners are completed within 30 days of the grant of the Order. As requested by Consumer Groups, we encourage FCA US to notify current owners in the follow-up phone calls that, even if they are not in immediate need of the accessibility features, a future owner of the vehicle may have a need for such features.⁵⁰

11. We decline to “require that FCA US file annual status reports for the next five years or until all sold and unsold vehicles have been updated,” as requested by Consumer Groups.⁵¹ FCA US has explained the technological remedy needed to make the rear-seat vehicle systems on affected Dodge Journey vehicles accessible, which is a quick software update. FCA US contends that the rear-seat video systems on all affected unsold vehicles will be updated with the requisite audio file before sale, and we find that contention to be credible. Thus, we do not see a need for annual reporting with respect to the unsold vehicles. Further, with respect to the sold vehicles, the Commission has already been apprised of FCA US’s plan to notify every owner of an affected vehicle via both letter and follow-up phone call, and the number of vehicles updated each year is dependent on whether vehicle owners choose to return to the dealership. For these reasons, we do not think it is necessary to require annual reporting with respect to the sold vehicles.

12. Finally, although FCA US has sought waiver only of the rules requiring the accessibility of the built-in apparatus functions for people who are blind or visually impaired, we remind the company of its obligation to ensure that individuals with disabilities are aware of the availability of accessible devices and have ready access to information and support that will allow them to operate such devices.⁵²

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 613, and

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See supra* para. 6.

⁴⁹ *See* Petition at 6; Aug. 7, 2017 Update at 2.

⁵⁰ Consumer Groups Aug. 22, 2017 *Ex Parte* Letter at 2.

⁵¹ *Id.* at 3.

⁵² *See supra* n.10.

Sections 0.61, 0.283, and 1.3 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and 1.3, this Memorandum Opinion and Order IS ADOPTED.

14. **IT IS FURTHER ORDERED** that the petition for waiver of Sections 79.107(a)(1)-(2) and 79.107(b) of the Commission's rules, 47 CFR §§ 79.107(a)(1)-(2) and 79.107(b), filed by Fiat Chrysler Automobiles US LLC IS GRANTED, subject to the requirement that Petitioner notify all owners of affected vehicles of the availability of an accessibility solution within 30 days of grant of this Order.

15. 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 Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

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