

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

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

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 2, 2018****Released: November 2, 2018**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, we address a petition filed by the American Cable Association (ACA) requesting that the Federal Communications Commission (FCC or Commission) grant two waivers of its rules requiring the accessibility of user interfaces on covered navigation devices for certain small and mid-sized multichannel video programming distributors (MVPDs).<sup>1</sup> ACA has identified certain classes of cable systems that it claims will be unable to partially or fully comply with the accessible user interfaces rules due to the unavailability of compliant solutions in the market that work for these systems. Specifically, ACA requests a limited waiver of the requirements of section 79.108 of the Commission's rules for certain mid-sized or smaller systems that utilize quadrature amplified modulation (QAM), as they apply to the system's two-way service offerings (*e.g.*, video on demand).<sup>2</sup> Additionally, ACA requests a waiver from the requirements of section 79.108 for certain small cable systems that offer any video programming channels in only analog format or do not offer broadband Internet access service to their residential video subscribers.<sup>3</sup> For the reasons set forth below, we grant ACA's request pursuant to the Commission's general waiver authority, subject to the customer notification requirements and conditions described herein.

**II. BACKGROUND**

2. In 2013, the Commission adopted rules pursuant to sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)<sup>4</sup> to make user interfaces and video programming guides and menus accessible on televisions, set-top boxes, and other devices used to

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<sup>1</sup> Petition for Waiver of the American Cable Association, MB Docket No. 12-108 (filed June 15, 2018) (Petition).

<sup>2</sup> *Id.* at 9-11.

<sup>3</sup> *Id.* at 12-14.

<sup>4</sup> 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).

view video programming.<sup>5</sup> With respect to set-top boxes and other types of navigation devices, the accessible user interfaces rules require that on-screen text menus and guides provided by such devices for the display or selection of multichannel video programming must be audibly accessible in real time upon request by individuals who are blind or visually impaired,<sup>6</sup> if achievable.<sup>7</sup> MVPDs that lease or sell navigation devices, as well as navigation device manufacturers, are responsible for compliance with these rules.<sup>8</sup> In accordance with further rules adopted in 2015, MVPDs and manufacturers of navigation devices are also required to ensure that individuals with disabilities are aware of the availability of accessible navigation devices and have ready access to information and support that will allow them to operate such devices.<sup>9</sup> Entities covered by the accessible user interfaces rules were required to comply by December 20, 2016, subject to certain exceptions.<sup>10</sup>

3. When adopting the accessible user interfaces rules, the Commission set a later compliance deadline for certain mid-sized and smaller MVPDs.<sup>11</sup> In particular, MVPD operators with 400,000 or fewer subscribers as of year-end 2012, and 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, are currently subject to a two-year deferred compliance deadline and are expected to comply by December 20, 2018.<sup>12</sup> In the *Accessible User Interfaces Order*, the Commission delegated authority to the Media Bureau to review the marketplace after the December 20, 2016 deadline for larger MVPDs to determine whether the delayed compliance deadline for mid-sized and smaller MVPDs should be retained or extended, in whole or in part.<sup>13</sup> In order to inform its review of the marketplace for accessible navigation devices, the Bureau issued a Public Notice in 2017 that sought comment on issues related to the accessibility solutions used by larger MVPDs and on the types of solutions available to mid-sized and

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<sup>5</sup> 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (*Accessible User Interfaces Order*).

<sup>6</sup> 47 CFR § 79.108(a)(1)-(3). In addition, navigation devices with built-in closed captioning capability must include a mechanism that is reasonably comparable to a button, key, or icon for activating the closed captioning. *Id.* § 79.109(b). This requirement is not at issue in ACA's Petition and, thus, remains unaffected by this waiver order.

<sup>7</sup> "Achievable" means "with reasonable effort or expense," and the Commission will consider four specific factors when determining whether compliance with the requirements of the rules is not achievable. *Id.* § 79.108(c)(2).

<sup>8</sup> *Id.* §§ 79.108(a)(1); 79.109(b).

<sup>9</sup> See *id.* § 79.108(d)(1)-(2), (f). See also *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 (2015).

<sup>10</sup> See 47 CFR §§ 79.108(b), 79.109(c).

<sup>11</sup> *Accessible User Interfaces Order*, 28 FCC Rcd at 17402, para. 115.

<sup>12</sup> 47 CFR §§ 79.108(b)(1)-(2), 79.109(c)(1)-(2).

<sup>13</sup> *Accessible User Interfaces Order*, 28 FCC Rcd at 17401, para. 114.

smaller MVPDs to achieve accessibility in anticipation of the December 20, 2018 deadline.<sup>14</sup>

4. In comments and reply comments filed in response to this Public Notice, and as summarized in more detail herein, ACA observed that the marketplace for accessible navigation devices did not “coalesc[e] around uniform solutions that could be widely adopted by all covered MVPDs,” but instead “most large operators spent significant sums to develop talking guides that are highly customized to their own systems and networks.”<sup>15</sup> However, the record in this proceeding generally showed that small operators are on track to comply with the deadline. Specifically, ACA explained that many small and mid-sized cable operators will be well positioned to meet their obligations by the December 20, 2018 deadline by utilizing an advanced user interface developed by TiVo for use on a wholesale basis, and that others will be able to meet at least some of those obligations through use of an advanced CableCARD “plug-in” device currently available at retail.<sup>16</sup> ACA noted that the “plug-in” device serves as only a partial solution for some operators because it does not support two-way services, and that there are two small subsets of cable systems with which this device is not compatible at all—specifically, systems that offer some channels in their lineup in only analog format and systems that do not offer broadband Internet access service.<sup>17</sup>

5. Subsequently, ACA filed its Petition seeking waivers from the accessible user interfaces requirements for the subset of small and mid-sized cable systems that cannot utilize the available accessibility solutions, or for which there are only partial solutions available. First, ACA requests that the Bureau waive the requirements of section 79.108 as they apply to a system’s two-way service offerings, if the system: (i) satisfies the definition of a digital cable system under section 76.640(a) of the Commission’s rules;<sup>18</sup> and (ii) is offering a user guide as of December 20, 2018 that either does not enable the accessibility of all functions required by section 79.108 that are offered by the system or for which the provider of such guide has not released a software update or application for a third-party device that alone would enable the accessibility of all such functions offered by the system.<sup>19</sup> Additionally, ACA requests that the Media Bureau grant a full waiver from the requirements of section 79.108 for a system that (i) qualifies for the partial waiver of section 79.108 as it applies to a system’s two-way service offerings; (ii) has 20,000 or fewer subscribers; and (iii) offers, as of December 20, 2018, any video programming channels in only an analog format or does not offer broadband Internet access service to its residential

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<sup>14</sup> See *Media Bureau Seeks Comment on December 20, 2018 Accessible User Interfaces Deadline for Mid-Sized and Smaller MVPDs*, Public Notice, 32 FCC Rcd 7332 (MB 2017). In particular, the Public Notice sought comment on the accessibility solutions that have been designed and developed by larger MVPDs to meet the December 2016 compliance deadline, and on whether mid-sized and smaller MVPDs can implement such solutions; on whether larger MVPDs have encountered any issues with respect to meeting their obligations; on whether mid-sized and smaller MVPDs subject to the deferred compliance deadline have begun the process of identifying and implementing workable accessibility solutions that are compliant with the Commission’s rules in anticipation of the December 20, 2018 deadline; and on the types of solutions mid-sized and smaller MVPDs expect to implement to achieve accessibility. See *id.*

<sup>15</sup> Comments of American Cable Association, MB Docket No. 12-108, at 4 (Oct. 30, 2017) (ACA PN Comments). See also Reply Comments of American Cable Association, MB Docket No. 12-108, at 2 (Nov. 13, 2017).

<sup>16</sup> ACA PN Comments at 4.

<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> Section 76.640(a) of the Commission’s rules defines a digital cable system as “a cable system with one or more channels utilizing QAM modulation for transporting programs and services from its headend to receiving devices.” 47 CFR § 76.640(a). By relying on this definition, ACA is limiting its waiver request to QAM-based systems.

<sup>19</sup> Petition at 5, 9-11.

video subscribers.<sup>20</sup>

6. On June 25, 2018, the Media Bureau issued a Public Notice seeking comment on ACA's Petition.<sup>21</sup> NTCA—The Rural Broadband Association (NTCA), WTA – Advocates for Rural Broadband (WTA), and Pine Belt Communications, Inc. (Pine Belt) filed comments in support of ACA's waiver request,<sup>22</sup> and one individual commenter filed comments in opposition to the request.<sup>23</sup>

7. We evaluate ACA's waiver request pursuant to the general waiver authority in section 1.3 of the Commission's rules.<sup>24</sup> 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.<sup>25</sup>

### III. DISCUSSION

8. For the reasons set forth below, we find that there is good cause to grant the requested waivers of section 79.108 of the Commission's rules, which requires user interfaces on navigation devices to be accessible to individuals who are blind or visually impaired, with respect to the certain classes of small and mid-sized cable systems identified by ACA that will be unable to partially or fully comply with the rule.

9. We find that there are special circumstances in this case that support deviating from the general requirement that on-screen text menus and guides provided for the display and selection of multichannel video programming be audibly accessible upon request by individuals who are blind or visually impaired. When the Commission adopted a longer phase-in of the accessible user interfaces requirements for mid-sized and smaller MVPDs, it anticipated that the market for accessible navigation devices would be driven by larger MVPDs. In particular, the Commission recognized that mid-sized and smaller entities "generally lack the market power and resources to drive independently the development of MVPD headend or customer premises equipment," and typically rely on the research and development efforts of larger operators in order to deploy new equipment and services to customers.<sup>26</sup> The Commission gave certain mid-sized and smaller entities an additional two years to comply, with the expectation that accessibility solutions developed by larger MVPDs would become available to smaller

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<sup>20</sup> *Id.* at 5, 12-14.

<sup>21</sup> *Media Bureau Seeks Comment on American Cable Association's Petition for Waiver of Accessible User Interfaces Requirements*, Public Notice, MB Docket No. 12-108, DA 18-659 (MB rel. June 25, 2018).

<sup>22</sup> *See* Comments of NTCA—The Rural Broadband Association, MB Docket No. 12-108 (July 10, 2018) (NTCA Comments); Comments of WTA – Advocates for Rural Broadband, MB Docket No. 12-108 (July 10, 2018) (WTA Comments); Comments of Pine Belt Communications, Inc., MB Docket No. 12-108 (July 10, 2018) (Pine Belt Comments).

<sup>23</sup> *See* Comments of Matthew Davidson, MB Docket No. 12-108 (June 25, 2018) (Davidson Comments).

<sup>24</sup> 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."). 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 also* 47 CFR §§ 0.61, 0.283, and 1.3.

<sup>25</sup> *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).

<sup>26</sup> *Accessible User Interfaces Order*, 28 FCC Rcd at 17402, para. 115.

providers at lower costs.<sup>27</sup> However, ACA explains that the market for accessibility solutions has not developed as expected, as larger MVPDs have invested in costly, proprietary solutions that are not feasible options for a number of mid-sized and smaller MVPDs.<sup>28</sup> According to ACA, “large MVPDs spent significant sums to develop their own advanced user interfaces that work exclusively on their networks or to upgrade their networks to run an advanced user interface developed by a third party.”<sup>29</sup> NTCA contends that, for many mid-sized and small MVPDs, “utilization of solutions available to large providers would require a total reengineering of their networks akin to starting from scratch and rebuilding their systems from the ground up.”<sup>30</sup>

10. Although the market for accessible navigation devices did not develop as anticipated, ACA posits that many mid-sized and smaller cable systems that rely on QAM will be able to comply by the December 20, 2018 deferred deadline by utilizing certain solutions available at wholesale or at retail.<sup>31</sup> Some mid-sized and smaller operators have already upgraded or plan to upgrade their systems to use an accessible user interface developed by TiVo for use on a wholesale basis, which is an option for those systems that have compatible network configurations and can afford the significant costs to implement this solution.<sup>32</sup> Although the wholesale TiVo solution is said to offer a fully compliant accessibility solution for QAM-based services,<sup>33</sup> WTA observes that “the upgrades necessary for small providers to deploy that solution can cost at least \$100,000, making it simply unaffordable for those with small customer bases.”<sup>34</sup> In addition, other mid-sized and smaller cable systems will be able to meet their obligations by relying on a “plug-in” device sold at retail, the TiVo Bolt, which is a CableCARD navigation device that provides DVR capability, or another “plug-in” device available on the wholesale market for operators that do not offer DVR capability.<sup>35</sup> According to ACA, the TiVo Bolt offers a fully compliant solution for those cable operators that rely on QAM modulation and that provide their entire video programming channel lineup in digital, do not offer any two-way services such as video-on-

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<sup>27</sup> See *id.* at 17402-03, paras. 115-116.

<sup>28</sup> Petition at 7. See also NTCA Comments at 2-4 (“As ACA notes (and NTCA can confirm based on feedback provided by members and the vendor community), the [s]ection 79.108 solutions utilized by larger MVPDs are in effect proprietary, compatible with their networks as they exist today but not with those of other providers.”); WTA Comments at 3; ACA PN Comments at 12-15.

<sup>29</sup> Petition at 7.

<sup>30</sup> NTCA Comments at 4.

<sup>31</sup> Petition at 7. For those cable providers that offer video services over Internet protocol (IPTV), ACA expects vendors to make available applications that run on third-party devices to provide accessible guide capabilities by the deadline. *Id.* Thus, such providers are not subject to the waivers at issue here.

<sup>32</sup> See *id.* at 4, 7-8; NTCA Comments at 4.

<sup>33</sup> See ACA PN Comments at 16 (“[T]o ACA’s knowledge, the TiVo ‘Quattro’ platform is currently the only wholesale, non-proprietary user interface with a programming guide that can provide a complete, accessible solution that is fully functional with all aspects of a cable operator’s QAM-based service.”).

<sup>34</sup> WTA Comments at 3. See also Petition at 7 & n.16; ACA PN Comments at 17 (stating that “the overall expense of adopting the platform through a direct deal [with TiVo] still runs in the hundreds of thousands of dollars, making it prohibitively expensive for small operators,” while those who have taken advantage of a National Cable Television Cooperative (NCTC) deal with TiVo “can do so through the NCTC agreement with an initial investment of roughly \$100,000, plus the cost of the devices themselves and ongoing TiVo license fees”).

<sup>35</sup> Petition at 7-8. ACA contends that purchasing a retail TiVo device and paying the monthly service charge for a requesting subscriber is “a significantly more economical solution” for small operators as compared to the system-wide upgrades needed to implement the TiVo wholesale platform. See ACA PN Comments at 19.

demand, and provide residential broadband Internet access.<sup>36</sup>

11. ACA indicates that, although the “plug-in” devices will be sufficient to allow many mid-sized and smaller QAM operators who cannot afford a fully integrated solution to fulfill their accessible user interfaces obligations, for others they provide only a partial solution, and for another small group they are not a viable solution at all. ACA explains that these devices do not provide two-way communications with QAM-based services and, therefore, a subscriber using such device will not be able to access any QAM-delivered two-way services offered by the cable operator, such as video-on-demand.<sup>37</sup> Further, ACA indicates that the “plug-in” accessibility solution will not work for two narrow, and likely overlapping, classes of systems—systems that do not offer their entire channel lineup in digital format and systems that do not offer broadband Internet access service.<sup>38</sup> According to ACA, the “plug-in” devices do not include analog tuners, which means that any analog channels will not be viewable on these devices, making this option infeasible for systems that offer some or all channels in analog-only format.<sup>39</sup> Additionally, the “plug-in” devices require broadband Internet access to obtain the data and information to populate their guides.<sup>40</sup> Thus, any systems that do not also offer broadband connections will not be able to offer customers a “plug-in” navigation device with accessible guide capabilities.<sup>41</sup> To address these issues, ACA seeks two waivers as described above.<sup>42</sup>

12. We find that granting the waivers requested by ACA in these limited circumstances is in the public interest because it would provide relief to small cable systems that are financially unable to undertake the significant network upgrades necessary to adopt a fully compliant user interfaces solution. ACA argues that “[s]uch compliance burdens would result in some operators absorbing the significant cost by raising prices for all their customers and others ceasing to offer video services altogether,” both of which would be detrimental to the public interest.<sup>43</sup> Further, even if a system could afford the substantial costs of adopting a fully compliant user interfaces solution, the solution may not be technically feasible for such system.<sup>44</sup> NTCA likewise explains that requiring full compliance would result in entities having “to reengineer almost entirely their existing video distribution networks at a cost that could render their business financially untenable going forward.”<sup>45</sup> According to NTCA, “for most small and mid-sized MVPDs, the business is break-even at best – and the expenditures necessary for system-wide network modifications necessary to comply with [s]ection 79.108 would likely force them to exit the market entirely.”<sup>46</sup> Similarly, WTA contends that “the cost of full compliance will be far too great for many already hard-pressed small video providers and will result in many leaving the marketplace. This would

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<sup>36</sup> Petition at 8.

<sup>37</sup> *Id.* at 9-10.

<sup>38</sup> *Id.* at 12.

<sup>39</sup> *Id.* at 13.

<sup>40</sup> *Id.* at 12-13.

<sup>41</sup> *See id.*

<sup>42</sup> *See supra* para. 5.

<sup>43</sup> Petition at 17-18.

<sup>44</sup> *See id.* at 8; NTCA Comments at 4.

<sup>45</sup> NTCA Comments at 2.

<sup>46</sup> *Id.* at 4-5. *See also* Pine Belt Comments at 2-3 (explaining that Pine Belt, which serves 600 subscribers in rural Alabama on its cable system, would be forced to upgrade its entire system to meet the talking guide requirement, and that this “would likely put Pine Belt out of business, which would leave many of its subscribers without cable and broadband services”; the “plug-in” solution does not work because subscribers would not be able to access Pine Belt’s analog channels).

leave many rural Americans without a video option outside of satellite offerings.”<sup>47</sup> As the Commission recognized in the *Accessible User Interfaces Order*, small systems have a smaller customer base across which to spread costs.<sup>48</sup> We believe that it is in the public interest for small providers that are unable to fully or partially comply with the rule to remain viable and to continue to offer cable service to their communities.<sup>49</sup>

13. We also take into consideration the limited scope of the waiver request, which applies only to a small and narrowly tailored class of cable systems.<sup>50</sup> As ACA explains, many mid-sized and smaller MVPDs will be able to fully comply with the accessible user interfaces requirements by the deferred compliance deadline.<sup>51</sup> Specifically, ACA contends that “as many as, if not more than, 97 percent of all domestic MVPD subscribers (roughly 92 million households) will be able to request a talking guide that is fully compliant with the Commission’s rules on December 20, 2018.”<sup>52</sup> Commenter Matthew Davidson, who filed the sole opposition to ACA’s Petition, argues generally that there are over 40 million Americans with disabilities and granting the Petition would reduce their access to the information provided by “modern media.”<sup>53</sup> We agree with Mr. Davidson that requiring companies to comply with accessibility requirements benefits Americans with disabilities and improves life for all Americans.<sup>54</sup> However, we emphasize that the waiver request extends only to a narrow subset of those mid-sized and smaller cable systems that are subject to the December 20, 2018 deferred compliance deadline (and not larger systems that were required to be in compliance as of December 20, 2016), if the commercial solutions available today offer only partial solutions for such systems or are not feasible solutions at all. Thus, we are persuaded by the narrow impact of the relief requested by ACA in finding good cause for the requested waivers.

14. With respect to the waiver for QAM-based cable systems as applied to the system’s two-way service offerings, we disagree with ACA’s argument that consumers who are blind or visually impaired “are not likely to be significantly disadvantaged if they cannot use these two-way services, such as [video-on-demand].”<sup>55</sup> ACA indicates that consumers who are blind or visually impaired would still be able to access the system’s essential video services, such as the linear programming lineup and the electronic programming guide, and that only the system’s two-way services would be inaccessible.<sup>56</sup> ACA further contends that consumers can access the same and additional on-demand content from over-the-top providers, “thereby largely nullifying any disadvantage of not receiving two-way services

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<sup>47</sup> WTA Comments at 2-3.

<sup>48</sup> *Accessible User Interfaces Order*, 28 FCC Rcd at 17402, para. 115.

<sup>49</sup> See NTCA Comments at 2-3.

<sup>50</sup> See *id.* at 3; Petition at 19.

<sup>51</sup> See *supra* para. 10.

<sup>52</sup> Petition at 19. See also ACA PN Comments at 5, 18 (“ACA’s research indicates that between the MVPDs with more than 400,000 subscribers currently subject to the talking guide requirements and the mid-sized and small cable operators serving nearly 2 million that have deployed the TiVo wholesale platform on some or all of their systems and have plans to do so in the near future, it is likely that as many as 97 percent of all domestic MVPD subscribers will have access to three or more MVPDs in their local market that can provide a talking guide that is fully compliant [with] the Commission’s requirements.”).

<sup>53</sup> Davidson Comments at 1.

<sup>54</sup> See *id.*

<sup>55</sup> Petition at 18.

<sup>56</sup> *Id.*

provided by the system.”<sup>57</sup> However, the issue is not just that on-demand programming and related functions would not be provided with audible accessibility if a “plug-in” device is utilized; instead, on-demand programming would not be available at all to subscribers using the device. Further, many over-the-top on-demand options require additional subscription fees and may not necessarily duplicate the on-demand content provided by a cable provider.<sup>58</sup> Nevertheless, we take into consideration that “[m]any very small cable operators do not offer any video-on-demand service to their customers, and many small cable operators that offer video-on-demand have not been investing in the service in recent years as consumers have increasingly turned to over-the-top providers for their video-on-demand needs.”<sup>59</sup>

15. We agree with ACA’s proposal that, if software or other solutions become available that would provide full accessibility, cable systems would no longer be eligible for the requested waivers.<sup>60</sup> Specifically, with respect to the waiver for QAM-based systems as applied to their two-way services, ACA suggests that it should include the following condition: “If at any time an MVPD deploys a user guide that would bring a system into full compliance with [s]ection 79.108, such that the system no longer meets the criteria for the partial waiver, this waiver shall cease to apply immediately. Likewise, if at any time a user guide update or application that works on third-party devices is released that alone would allow a system to fully comply, such that the system no longer meets the criteria for partial waiver, this waiver shall cease to apply within 180 days of such release.”<sup>61</sup> ACA contends that the 180-day time frame will give the system operator time to deploy such solution.<sup>62</sup> With respect to the full waiver for QAM-based systems that offer any video programming channels in analog-only format or do not offer broadband Internet access service, ACA suggests the following conditional language: “If at any time a system offers all video programming channels in digital or begins offering broadband Internet access service to its residential video subscribers, such that the system no longer qualifies for waiver, then this waiver shall immediately cease to apply, and the system may not be eligible for such full waiver again.”<sup>63</sup> We condition our grant of the waiver request upon these conditions.

16. In addition, we agree with ACA that systems that qualify for either waiver should be required to provide notice annually to current customers for as long as the system chooses to rely on the waiver and to provide notice to both current and potential customers when they inquire about accessibility options. We impose ACA’s proposed formal notice for operators that qualify for the partial waiver of the talking guide requirements:

[Name of Cable Operator] qualifies for a partial waiver from the FCC that relieves [Name of Cable Operator] from offering audibly accessible functionality for its two-way video services via on-screen text menus and guides for the display or selection of multichannel video programming provided by navigation devices that it leases or sells in real-time upon request by individuals who are blind or visually impaired. Therefore, customers who are blind or visually impaired using [Name of Cable Operator] will not be able to access some of the two-way service functions, such as video-on-demand, in the display or selection of multichannel video programming via on-screen

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<sup>57</sup> *Id.*

<sup>58</sup> In addition, we note generally that the availability of accessible products offered by another entity is not a justification for noncompliance with an entity’s accessibility obligations.

<sup>59</sup> ACA PN Comments at 20, n.48. *See also* Petition at 18.

<sup>60</sup> Petition at 5 (“If at any time a system no longer meets the criteria of either the partial or full waiver, or if a solution comes to the retail market that alone can enable the accessibility of all covered functions offered by the system, the waiver for which the system no longer qualifies will cease to apply, and such system may not be eligible for such waiver again.”).

<sup>61</sup> Petition at 11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 14.



text menus and guides included in the device that [Name of Cable Operator] leases or sells to you. Other television providers in your area may offer navigation devices with complete audibly accessible features. For more information, contact [Name of Cable Operator] at [Phone Number and Email of Cable Operator].<sup>64</sup>

We also impose ACA's proposed formal notice for operators that qualify for the full waiver of the talking guide requirements:

[Name of Cable Operator] qualifies for a waiver from the FCC that relieves [Name of Cable Operator] of the requirement to ensure that on-screen text menus and guides for the display or selection of multichannel video programming provided by navigation devices that it leases or sells are audibly accessible in real-time upon request by individuals who are blind or visually impaired. Therefore, customers who are blind or visually impaired using [Name of Cable Operator] will not be able to audibly access any of the functions in the display or selection of multichannel video programming via on-screen text menus and guides. Other television providers in your area may offer navigation devices with audibly accessible features. For more information, contact [Name of Cable Operator] at [Phone Number and Email of Cable Operator].<sup>65</sup>

Entities subject to the waivers must (i) at least once per year, provide the relevant notice by directly contacting customers, such as via a billing statement or billing insert, or a phone call or email to customers; and (ii) provide such notice to both current and potential customers when they inquire about accessibility options, such as by having customer service representatives provide the information directly in response to an inquiry and by providing this information on its website where the required notice of accessibility options is presented.<sup>66</sup> Further, if at any time a cable system ceases to qualify for a waiver, it must, within 30 days of coming into compliance, provide written notification to subscribers and display notice on its website that accessible devices are available upon request to those who are blind or visually impaired.<sup>67</sup> Any such notice shall be provided in a format that is accessible to individuals with disabilities.

17. For the aforementioned reasons, we find good cause to grant a waiver of the accessible user interfaces requirements in section 79.108 of the Commission's rules as they apply to a cable system's two-way service offerings, if the system: (i) is subject to the December 20, 2018 compliance deadline under section 79.108(b) of the Commission's rules; (ii) satisfies the definition of a digital cable system under section 76.640(a) of the Commission's rules; and (iii) is offering a user guide as of December 20, 2018 that either does not enable the accessibility of all functions required by section 79.108 that are offered by the system or for which the provider of such guide has not released a software update or application for a third-party device that alone would enable the accessibility of all such functions offered by the system. This waiver is subject to the requirement that the cable systems provide notice annually to current customers for as long as the system chooses to rely on the waiver and provide notice to both current and potential customers when they inquire about accessibility options, as well as to the conditions described above.<sup>68</sup> We also find good cause to grant a waiver of the accessible user interfaces requirements in section 79.108 of the Commission's rules for a system that (i) qualifies for the partial waiver of section 79.108 as it applies to a system's two-way service offerings; (ii) has 20,000 or fewer subscribers; and (iii) as of December 20, 2018, offers any video programming channels in only an analog format or does not offer broadband Internet access service to its residential video subscribers. This

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<sup>64</sup> *Id.* at 15.

<sup>65</sup> *Id.* at 15-16.

<sup>66</sup> *See id.* at 16.

<sup>67</sup> *Id.*

<sup>68</sup> *See supra* para. 15.

waiver is subject to the requirement that the systems provide notice annually to current customers for as long as the system chooses to rely on the waiver and provide notice to both current and potential customers when they inquire about accessibility options, as well as to the conditions described above.<sup>69</sup>

#### IV. ORDERING CLAUSES

18. 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 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.

19. **IT IS FURTHER ORDERED** that a waiver of section 79.108 of the Commission's rules, 47 CFR § 79.108, IS GRANTED as applied to a cable system's two-way service offerings, if the system: (i) is subject to the December 20, 2018 compliance deadline under section 79.108(b) of the Commission's rules; (ii) satisfies the definition of a digital cable system under section 76.640(a) of the Commission's rules; and (iii) is offering a user guide as of December 20, 2018 that either does not enable the accessibility of all functions required by section 79.108 that are offered by the system or for which the provider of such guide has not released a software update or application for a third-party device that alone would enable the accessibility of all such functions offered by the system, subject to the notification requirements and conditions set forth herein.

20. **IT IS FURTHER ORDERED** that a waiver of section 79.108 of the Commission's rules, 47 CFR § 79.108, IS GRANTED for a cable system that (i) qualifies for the partial waiver of section 79.108 as it applies to a system's two-way service offerings; (ii) has 20,000 or fewer subscribers; and (iii) as of December 20, 2018, offers any video programming channels in only an analog format or does not offer broadband Internet access service to its residential video subscribers, subject to the notification requirements and conditions set forth herein.

21. 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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

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<sup>69</sup> See *id.*