

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 16, 2019

Released: September 16, 2019

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address an amended petition¹ filed by Google Fiber Inc. (Google Fiber) requesting that the Media Bureau grant a limited waiver of the Commission’s rules requiring the accessibility of user interfaces on covered navigation devices used to access multichannel video programming.² Specifically, Google Fiber requests a limited waiver of section 79.108 of the Commission’s rules for certain video programming functions that cannot be made accessible through Google Fiber’s offered accessibility solution for a limited time period. For the reasons set forth below, we grant the unopposed Petition, subject to the condition that Google Fiber provide status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau on its efforts to develop accessible functions as described herein.

II. BACKGROUND

2. The Commission adopted rules in 2013 under the authority of 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.³ Section 79.108 of the rules requires that on-screen text menus and guides provided by navigation 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,⁴ if achievable.⁵ Specifically, section 79.108 requires that the following nine functions

¹ Amended Petition for Limited Waiver of Google Fiber Inc., MB Docket No. 12-108 (filed May 13, 2019) (Petition) (amending Petition for Limited Waiver of Google Fiber Inc., MB Docket No. 12-108 (filed Dec. 19, 2018)). See infra note 22. The Media Bureau did not seek comment on the original Petition for Limited Waiver because Google Fiber informed the Bureau that the Petition required amendment.

² 47 CFR § 79.108.

³ 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).

⁴ 47 CFR § 79.108(a)(1)-(3). The rules also specify how covered entities should make accessible navigation devices available to requesting blind or visually impaired consumers, and how such entities can comply through the use of separate equipment or software. See id. § 79.108(a)(5)-(7). In accordance with further rules adopted in 2015, multichannel video programming distributors (MVPDs) and manufacturers of navigation devices must also ensure that individuals with disabilities are aware of the availability of accessible navigation devices and have ready access

(continued...)

that are used for the display or selection of multichannel video programming must be made audibly accessible when included in a navigation device and accessed through on-screen text menus or guides: (1) channel/program selection; (2) display channel/program information; (3) configuration—setup; (4) configuration—closed captioning control; (5) configuration—closed captioning options; (6) configuration—video description control; (7) display configuration info; (8) playback functions; and (9) input selection.⁶ Multichannel video programming distributors (MVPDs) that lease or sell navigation devices, as well as navigation device manufacturers, generally were required to make each of these functions audibly accessible by December 20, 2016.⁷ The Commission set a later compliance deadline, however, for certain mid-sized and smaller MVPDs.⁸ 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, were subject to a two-year deferred compliance deadline and required to comply by December 20, 2018.⁹ Google Fiber is subject to the December 20, 2018 compliance deadline.¹⁰

3. Google Fiber is a high-speed broadband Internet and television provider that utilizes fiber optic cables and fixed wireless deployments to deliver gigabit internet speeds to residential and business customers in various U.S. metro areas.¹¹ Google Fiber claims that it is partially unable to comply with the Commission’s accessible user interfaces requirements for its navigation devices. Currently, Google Fiber makes available to its subscribers an in-home streaming service through its “Fiber TV” app available for iOS and Android devices, which permits subscribers to perform many set-top box functions using their mobile device as a remote control and uses the native and third-party accessibility features of the mobile device (*e.g.*, screen readers) for navigation device accessibility.¹² Google Fiber explains that its current solution provides audible accessibility for consumers who are blind or visually impaired for most of the required video programming functions, but it seeks a waiver with respect to four functions for which it does not provide audible accessibility:

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to information and support that will allow them to operate such devices. *See 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); 47 CFR § 79.108(d)(1)-(2), (f).

⁵ 47 CFR § 79.108(c); *Accessible User Interfaces Order*, 28 FCC Rcd at 17379-80, paras. 77-78. “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. 47 CFR § 79.108(c)(2).

⁶ 47 CFR § 79.108(a)(2)(i)-(ix). In addition, the power on/off and volume adjust/mute functions must be made accessible in accordance with section 79.107(a)(3) of the rules to individuals who are blind or visually impaired. *Id.* § 79.108(a)(3). *See also* Petition at 3, n.4.

⁷ *See* 47 CFR § 79.108(b).

⁸ *Accessible User Interfaces Order*, 28 FCC Rcd at 17401-02, paras. 114-15.

⁹ 47 CFR § 79.108(b)(1)-(2). In 2018, the Media Bureau granted two waivers of its rules requiring the accessibility of user interfaces on covered navigation devices for certain small and mid-sized MVPDs—one 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), and another 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. *See Accessibility of User Interfaces, and Video Programming Guides and Menus*, Memorandum Opinion and Order, 33 FCC Rcd 11049 (2018).

¹⁰ Petition at 3.

¹¹ *See* Google Fiber Website, at <https://fiber.google.com/>.

¹² Petition at 4. Google Fiber indicates that its customers can use the Fiber TV app to navigate its programming as long as the mobile device is connected to the same WiFi network as the subscriber’s TV set-top box. *Id.*

- Activating video description (for certain programming) (*i.e.*, “configuration—video description control”)¹³;
- Adjusting the presentation and display of closed captioning (*i.e.*, “configuration—CC options”)¹⁴;
- Display of current configuration options (*i.e.*, “display configuration info”)¹⁵; and
- Activating set-top box configuration options (*i.e.*, “configuration—setup”).¹⁶

4. The Media Bureau issued a Public Notice seeking comment on the Petition.¹⁷ The American Council of the Blind (ACB), the American Foundation for the Blind (AFB), and the National Federation of the Blind (NFB) filed comments in response to the Public Notice and did not oppose Google Fiber’s waiver request.¹⁸

5. We evaluate Google Fiber’s waiver request pursuant to the general waiver authority in section 1.3 of the Commission’s rules.¹⁹ To waive a requirement for good cause, we must explain why deviating from the general requirement serves the public interest, as well as the nature of the special circumstances.²⁰

III. DISCUSSION

6. We find that there is good cause to grant Google Fiber’s requested waiver of the accessible user interfaces rules. As noted above, while Google Fiber indicates that most of its navigation device video programming functions are audibly accessible as required by the Commission’s rules, it seeks a limited waiver of audible accessibility obligations for four functions for which it is currently unable to provide a solution. Google Fiber has determined that it can provide accessibility for the first two of these functions – activating video description and adjusting closed captioning display – by updating its “Fiber TV” app “no later than by the end of 2019,” and it “continues to investigate the steps

¹³ “Configuration—Video Description Control” is defined as the “[f]unction 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.” 47 CFR § 79.108(a)(2)(vi).

¹⁴ “Configuration—CC Options” is defined as the “[f]unction 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.)” *Id.* § 79.108(a)(2)(v).

¹⁵ “Display Configuration Info” is defined as the “[f]unction that allows the user to display how user preferences are currently configured.” *Id.* § 79.108(a)(2)(vii).

¹⁶ Petition at 5. “Configuration—Setup” is defined as the “[f]unction 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.)” *Id.* § 79.108(a)(2)(iii).

¹⁷ See Public Notice, *Media Bureau Seeks Comment on Google Fiber’s Amended Petition for Limited Waiver of Accessible User Interfaces Requirements*, MB Docket No. 12-108, DA No. 19-430 (rel. May 16, 2019).

¹⁸ Comments of the American Council of the Blind, MB Docket No. 12-108 (June 17, 2019) (ACB Comments); Reply Comments of the American Foundation for the Blind, MB Docket No. 12-108 (July 1, 2019) (AFB Comments); Comments of the National Federation of the Blind, MB Docket No. 12-108 (June 10, 2019) (NFB Comments).

¹⁹ 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 also 47 CFR §§ 0.61, 0.283, and 1.3.

necessary to make audibly accessible to its customers the remaining two functions” – display of current configuration options and activating set-top box configuration options.²¹ As such, Google Fiber requests that the Media Bureau grant a waiver of the requirements of section 79.108 as follows: (1) for one year from the date of the original petition (*i.e.*, by December 19, 2019) for activating video description and adjusting the presentation and display of closed captioning; and (2) for the sooner of either two years from the date of the original petition (*i.e.*, by December 19, 2020), or the date on which it can comply, for the display of current configuration options and activating set-top box configuration options.²²

7. We find that grant of this waiver serves the public interest. According to Google Fiber, two of the functions that make video programming accessible to people with visual and/or hearing disabilities (activation of video description and adjusting presentation and display of closed captioning) will be made audibly accessible in accordance with the rules by December 19, 2019, which is a very short timeframe from release of this Order.²³ With respect to the other two functions (display of current configuration options and activating set-top box configuration options), Google Fiber will have a longer period to come into compliance, but has indicated that it has taken steps to mitigate the impact of this deficiency for subscribers who are blind or visually impaired.²⁴ Notably, Google Fiber explains that it has trained its installation technicians to adjust set-top box configurations during installation appointments and follow-up in-home service calls, and has trained customer service agents to assist subscribers in adjusting configurations, including programming configuration shortcuts for customers that use universal remote controls.²⁵ Although consumer groups raise concerns about Google Fiber’s accessibility deficiencies given the years that have passed since adoption of the CVAA and its implementing rules, they do not urge us to deny the waiver request.²⁶ While we grant Google Fiber’s request for waiver, we emphasize the importance of full and timely compliance with the Commission’s accessibility requirements. We encourage Google Fiber to expedite implementing an accessibility solution for display of current configuration options and activating set-top box configuration options as soon as reasonably possible, and we note that we are unlikely to extend the waiver period for any of the four functions absent compelling circumstances.²⁷

8. In addition, we conclude that there are special circumstances that support waiver in this instance. Google Fiber explains that, when it first began offering broadband and video service, it made an engineering decision to offer a unique, “bespoke” operating system and equipment.²⁸ Thus, while purchasing compliant “off the shelf” navigation devices as a separate accessibility solution may be a cost

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²⁰ *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).

²¹ Petition at 2.

²² *Id.* Google Fiber’s original petition was filed on December 19, 2018. See Petition for Limited Waiver of Google Fiber Inc., MB Docket No. 12-108 (filed Dec. 19, 2018). Google Fiber’s original petition requested a limited waiver of the four accessibility obligations until the sooner of two years from the date of the petition, or the date on which it completed the transition of its set-top boxes to a new Android operating system. See *id.* However, according to the amended petition, Google Fiber made a business decision not to proceed with the planned transition to a new operating system and now plans to update the Fiber TV app to provide the required accessibility. Petition at 1-2.

²³ Petition at 7.

²⁴ *Id.* at 6-7.

²⁵ *Id.* at 6.

²⁶ See NFB Comments at 2 (noting concerns but stating that “we are encouraged by the nearness of the deadlines being set to rectify the accessibility deficiencies,” and “[t]herefore, at this time, we do not oppose Google Fiber’s Amended Petition for Limited Waiver”). See also ACB Comments at 2; AFB Comments at 1-2.

²⁷ See AFB Comments at 1; NFB Comments at 2.

²⁸ Petition at 6.

effective option for other MVPDs, Google Fiber was not able to do so because it uses custom-built navigation products.²⁹ Because Google Fiber’s navigation products would need to be completely reengineered to provide the required accessibility and “are at the end of their lives and are no longer being manufactured,” providing accessibility via the separate “Fiber TV” app solution is a reasonable alternative to spending the time and resources to update equipment that will be replaced.³⁰ However, we strongly encourage Google Fiber to collaborate with consumer groups as it develops and integrates accessibility into any products it develops to ensure that they are accessible to and usable by persons with disabilities.³¹

9. While we find that grant of the waiver is in the public interest, we disagree with Google Fiber that waiver is appropriate because these functions are “limited . . . in impact.”³² In particular, Google Fiber asserts that “[s]et-top box configuration options are infrequently accessed and even more infrequently modified by subscribers,” and “it expects few if any of its customers to require access to these particular functions.”³³ Instead, we agree with NFB that “the frequency of use for a specific feature” should not factor into whether such function should be made accessible to persons with disabilities.³⁴ When the Commission adopted accessible user interfaces requirements, it concluded that the video programming functions specified in the rule are used for the display or selection of multichannel video programming and must be made audibly accessible to individuals who are blind or visually impaired if they are included in the device.³⁵ It did not prioritize the functions on the basis of frequency of use, but instead determined that each of these functions must be made accessible. Thus, we decline to factor into this waiver determination a subjective claim about the value of certain video programming functions to consumers.

10. As a condition to this waiver, we find that Google Fiber must submit status reports to demonstrate its progress toward achieving compliance upon expiration of the waiver period. Google Fiber has indicated that it is willing to provide staff with quarterly updates on its progress in making the functions audibly accessible.³⁶ Given the proximity of the first waiver deadline, we do not believe that a status report is necessary with respect to the two functions that will be made accessible no later than December 19, 2019 – activating video description and adjusting the presentation and display of closed captioning.³⁷ However, Google Fiber indicates that it “continues to investigate the steps necessary to

²⁹ *See id.*

³⁰ *See id.* at 6-7 (“Such re-engineering would require more than a year of software development and testing before the compliant solution would be available.”).

³¹ *See, e.g.,* AFB Comments at 2; ACB Comments at 2.

³² Petition at 5.

³³ *Id.* at 5-6.

³⁴ *See* NFB Comments at 1 (“The purpose of that feature’s presence is so that everyone, regardless of disability, is able to use the program or service.”). *See also* AFB Comments at 1; ACB Comments at 2.

³⁵ *Accessible User Interfaces Order*, 28 FCC Rcd at 17373-74, para. 68. The CVAA directed the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (VPAAC) with representatives from the industry and consumer groups. *Id.* at 17336, para. 10. The VPAAC identified 11 video programming functions as “essential functions,” and the Commission relied on this determination when determining which features are required to be made accessible pursuant to sections 204 and 205 of the CVAA. *Id.* at 17366-68, 17373-74, paras. 58, 68 (citing Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming and Menus, Apr. 9, 2012).

³⁶ Petition at 3.

³⁷ *Id.* at 7 (“Google Fiber will update its Fiber TV app to make additional features available that will be audibly accessible using the native or third-party accessibility capabilities of mobile devices, and will complete that update by the end of 2019.”).

make audibly accessible to its customers the remaining two functions.”³⁸ Thus, we find that Google Fiber must provide status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau on its efforts to develop accessibility for the display of current configuration options and activating set-top box configuration options on January 2, 2020 and June 1, 2020.³⁹ The first report should include a detailed description of how Google Fiber plans to make these functions accessible to individuals who are blind or visually impaired, as well as a timeline for achieving full compliance during the waiver period. The second status report should include information about Google Fiber’s progress toward meeting its accessibility obligations with respect to these functions.

11. Finally, although Google Fiber has sought waiver only of the rules requiring the accessibility of certain navigation device 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.⁴⁰

IV. ORDERING CLAUSES

12. 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**.

13. **IT IS FURTHER ORDERED** that the amended petition for waiver of section 79.108 of the Commission’s rules, 47 CFR § 79.108, filed by Google Fiber Inc. **IS GRANTED**, subject to the condition that Petitioner provide status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau on its efforts to develop accessible functions on January 2, 2020 and June 1, 2020.

14. **IT IS FURTHER ORDERED** that the original petition for waiver filed by Google Fiber, Inc. **IS DISMISSED** as moot.

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

Michelle M. Carey
Chief, Media Bureau

³⁸ *Id.* at 2, 7.

³⁹ The status reports shall be sent in hard copy via certified mail to Maria Mullarkey, Assistant Division Chief, Policy Division, Media Bureau, Federal Communications Commission, Room 4-A739, 445 12th Street SW, Washington, DC 20554, with copies submitted electronically to Maria.Mullarkey@fcc.gov; Michelle Carey, Chief, Media Bureau, Michelle.Carey@fcc.gov; Martha Heller, Chief, Policy Division, Media Bureau, Martha.Heller@fcc.gov; and Suzanne Rosen Singleton, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Suzanne.Singleton@fcc.gov.

⁴⁰ *See supra* note 4.