



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>

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Released: December 23, 2021

MEDIA BUREAU SEEKS COMMENT ON PELOTON INTERACTIVE, INC.'S PETITION FOR LIMITED WAIVER OF ACCESSIBLE USER INTERFACES REQUIREMENTS

MB Docket No. 12-108; GN Docket No. 21-140

Comments Due: January 24, 2022

Reply Comments Due: February 8, 2022

Peloton Interactive, Inc. (Peloton) has filed a petition¹ requesting that the Media Bureau grant a limited waiver of the Commission's rules requiring the accessibility of user interfaces on covered digital apparatus.² Specifically, Peloton requests an 18-month waiver of the obligations in section 79.107 of the Commission's rules to implement additional accessibility features for its connected fitness equipment.

In October 2013, the Commission adopted rules under the authority of sections 204 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)³ to make user interfaces on televisions, set-top boxes, and other devices used to view video programming.⁴ Section 79.107 of the Commission's rules requires that digital 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,⁵ if achievable.⁶ This rule also requires covered entities 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.⁷ Manufacturers of

¹ Petition for Limited Waiver of Peloton Interactive, Inc., MB Docket No. 12-108, GN Docket No. 21-140 (Dec. 20, 2021) (Petition), *available at* [https://ecfsapi.fcc.gov/file/1221276597367/2021.12.20%20-%20Peloton%20FCC%20Petition%20for%20Waiver%20\(Final\).pdf](https://ecfsapi.fcc.gov/file/1221276597367/2021.12.20%20-%20Peloton%20FCC%20Petition%20for%20Waiver%20(Final).pdf).

² Covered digital apparatus are those that are 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 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).

⁴ *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*).

⁵ 47 CFR § 79.107(a)(1)-(4). *See also Accessible User Interfaces Order*, 28 FCC Rcd at 17363-71, paras. 53-63.

⁶ 47 CFR § 79.107(c). *See also Accessible User Interfaces Order*, 28 FCC Rcd at 17379, paras. 77-78.

⁷ 47 CFR § 79.107(d)-(e). *See also 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).

covered digital apparatus⁸ are responsible for compliance with the rules, which set a compliance deadline of December 20, 2016, subject to certain exceptions.⁹ Certain categories of digital apparatus such as display-only monitors and video projectors and devices primarily designed for purposes other than displaying video programming were subject to a five-year deferred compliance deadline; thus, the compliance deadline for these devices was December 20, 2021.¹⁰

Peloton is an interactive fitness company that manufactures connected fitness equipment that hosts proprietary networked software and produces an extensive library of digital fitness content featuring a variety of instructors and fitness and wellness disciplines.¹¹ According to Peloton, it has begun implementing accessibility features into its products, including providing subtitles for live and on demand classes and screen reader technology on certain devices, but it needs additional time to complete the development and integration efforts for accessibility features that would meet or exceed Section 204's accessible user interfaces requirements.¹² Peloton contends that "designing and successfully integrating assistive technology into Peloton's platform is more complex than a simple software update," particularly given quality and safety product development requirements for all users, and that the additional time will allow for collaboration, testing, and training with Peloton's community members on proposed changes.¹³ Peloton requests that the Media Bureau grant an 18-month waiver of the requirements of section 79.107 – from December 20, 2021 to June 20, 2023 – with respect to the Peloton Bike+, Peloton Bike, Peloton Tread+, Peloton Tread, Precor's P62 Console, and Precor's P82 Console,¹⁴ as well as for any future products that may be subject to the Commission's accessibility obligations and may launch during the waiver period.¹⁵ We seek comment on Peloton's request.

Ex Parte Rules. The proceeding this Public Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

⁸ 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).

⁹ 47 CFR § 79.107(b).

¹⁰ *Id.* § 79.107(b)(1)-(3).

¹¹ Petition at 2.

¹² *Id.* at 3.

¹³ *Id.* at 7-11. Peloton provides a list of the additional accessibility features it plans to make in both Peloton and Precor products. *Id.* at 12-14.

¹⁴ Peloton indicates that it acquired Precor Incorporated (Precor), one of the world's largest commercial fitness equipment providers, earlier this year. *Id.*

¹⁵ *Id.* at 3-5. More specifically, Peloton seeks a waiver of Section 204's requirements for subject products sold before the waiver period (on or before December 20, 2021), subject products sold during the waiver period (between December 20, 2021 and June 20, 2023), and subject products developed and sold prior to the expiration of the waiver period (on or before June 20, 2023). *Id.* at 5.

¹⁶ 47 CFR § 1.1200 *et seq.*

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).

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

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

Additional Information. For additional information, contact Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

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