



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, DC 20554

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Internet: <https://www.fcc.gov>

DA 23-66

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## MEDIA BUREAU SEEKS COMMENT ON CLOSED CAPTIONING DISPLAY SETTINGS PROPOSAL

MB Docket No. 12-108

**Comments Due: [30 days after publication in the Federal Register]**

**Reply Comments Due: [45 days after publication in the Federal Register]**

With this Public Notice, the Media Bureau seeks comment on a proposal in the record of this proceeding that when the Commission is determining whether specific closed captioning display settings are readily accessible, it should consider the following factors: proximity, discoverability, previewability, and consistency and persistence.

In 2015, the Commission proposed rules that would require manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing.<sup>1</sup> In January 2022, the Media Bureau released a Public Notice seeking to refresh the record on the proposals contained in the *Second Further Notice*.<sup>2</sup> Comments were due February 17, 2022, and reply comments were due March 4, 2022.<sup>3</sup> In response to the *Closed Captioning Display Settings PN*, a coalition of consumer groups proposed that the Commission should require closed captioning display settings to be proximate, discoverable, previewable, and consistent and persistent.<sup>4</sup> The Consumer Technology Association (CTA) expressed concern about

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<sup>1</sup> *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, 13932-35, paras. 33-40 (2015) (*Second Further Notice*).

<sup>2</sup> *See Media Bureau Seeks to Refresh the Record on Accessibility Rules for Closed Captioning Display Settings Under the Television Decoder Circuitry Act*, MB Docket No. 12-108, DA 22-20 (Jan. 10, 2022) (*Closed Captioning Display Settings PN*).

<sup>3</sup> *See Announcement of Comment and Reply Comment Dates for Closed Captioning Display Settings Public Notice*, MB Docket No. 12-108, DA 22-53 (Jan. 18, 2022).

<sup>4</sup> Accessibility Advocacy and Research Organizations Comments, MB Docket No. 12-108, at 8-11 (filed Feb. 17, 2022), available at <https://www.fcc.gov/ecfs/document/10218268018374/1> (Consumer Groups 2022 Comments). *See also* Accessibility Advocacy and Research Organizations Reply Comments, MB Docket No. 12-108, at 1, 5-6, 7-8 (filed Mar. 4, 2022) (Consumer Groups 2022 Reply); Letter from Blake E. Reid, Counsel to TDI, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 2 (Apr. 28, 2022). The following organizations are parties to both the Consumer Groups 2022 Comments and the Consumer Groups 2022 Reply: Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults; Cerebral Palsy and Deaf Organization; Communication Service for the Deaf; Conference of Educational Administrators of Schools and Programs for the Deaf; Deaf Seniors of America; Hearing Loss Association of America; National Association of the Deaf; National Association of State Agencies of the Deaf and Hard of Hearing; Registry of Interpreters for the Deaf; Turtle Island Hand Talk; Disability and Rehabilitation Research Project on Twenty-First Century Captioning Technology, Metrics and Usability, Gallaudet University; Rehabilitation Engineering Research Center on Universal Interface &

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the proposed factors, and asserted that further public comment was necessary.<sup>5</sup> We believe that the Commission would benefit from further comment in this instance, and accordingly, this Public Notice seeks further comment on the 2022 proposal of the Consumer Groups in their comments to rely on these four factors to evaluate whether closed captioning display settings are readily accessible.

Interested parties should focus their comments on the specific issue of whether, if the Commission adopts rules governing the accessibility of closed captioning display settings, it should consider the four factors proposed by the Consumer Groups in 2022 – proximity, discoverability, previewability, and consistency and persistence – in determining whether closed captioning display settings are readily accessible.<sup>6</sup> Should the four factors have the meanings the Consumer Groups proposed in 2022? Should the factors be non-exhaustive, such that the Commission may consider additional factors as particular situations warrant? Commenters should provide any other information relevant to the Commission’s determination of how to proceed on this issue.<sup>7</sup>

*Initial Regulatory Flexibility Analysis.* The *Second Further Notice* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposals.<sup>8</sup> We invite parties to file comments on the IRFA in light of this request for further comment.

*Ex Parte Rules.* This matter shall continue to be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>9</sup> 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).

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Information Technology Access; and RIT/NTID Center on Access Technology. The following organizations are also parties to the Consumer Groups 2022 Comments: American Association of the DeafBlind; Helen Keller National Center; National Cued Speech Association; and Northern Virginia Resource Center for Deaf and Hard of Hearing Persons.

<sup>5</sup> See Consumer Technology Association Reply Comments, MB Docket No. 12-108, at 6 (filed Mar. 4, 2022) (asserting that adopting the four proposed factors “would first require significant further definition and public comment”); Letter from J. David Grossman, Vice President, Regulatory Affairs, and Brian Markwalter, Senior Vice President, Research & Standards, Consumer Technology Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 4 (June 30, 2022) (claiming that the proposal to require these factors “has not been subject to notice and comment – and could not have been predicted when the FCC released either the *Second Further Notice* or recent Public Notice”).

<sup>6</sup> See, e.g., Consumer Groups 2022 Comments at 9-10; Letter from Blake E. Reid, Counsel to TDI, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 3-4 (Sept. 20, 2022). As proposed by Consumer Groups, “proximity” would involve consideration of the number of steps required to access closed captioning display settings, as well as whether closed captioning display settings are available on the same device as the video programming (Consumer Groups 2022 Comments at 9); “discoverability” would involve consideration of whether it is simple and intuitive for viewers to find closed captioning display settings (*Id.* at 9-10); “previewability” would involve consideration of whether viewers can preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings (*Id.* at 10); and “consistency and persistence” would involve consideration of whether access to closed captioning display settings is “consistent . . . across devices and video platforms and across different applications on the same device” and persistent over time. *Id.*

<sup>7</sup> See, e.g., ACA Connects – America’s Communications Association Reply Comments, MB Docket No. 12-108, at 13-14, n.33 (filed Mar. 4, 2022) (arguing that the Commission should not adopt the proposed factors because “locking in one user interface for all devices and platforms would squelch innovation to the detriment of closed captioning consumers,” because “consumers who do not like such interface would suffer a lack of alternatives,” and because “ACA Connects also cannot discern any authority under the TDCA for the Commission to adopt these additional proposed measures”).

<sup>8</sup> *Second Further Notice*, 30 FCC Rcd at 13936, para. 42.

<sup>9</sup> *Id.* at 13936-37, para. 46. See 47 CFR § 1.1200 *et seq.*

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, 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.* All filings responsive to this Public Notice must reference MB Docket No. 12-108. 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](mailto: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 Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

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