

UPDATE November 13, 2018

Media Bureau Reminds Mid-Sized and Smaller MVPDs of December 20, 2018 Accessible User Interfaces Deadline, Also Grants ACA Waiver Request

On November 5, 2018, the FCC's Media Bureau released a [Public Notice](#) reminding smaller and mid-sized MVPDs that they must comply with the FCC's accessible user interfaces rules by December 20, 2018. This followed the Bureau's November 2, 2018 [Order](#) which granted two waivers requested by the American Cable Association.

All small and mid-sized MVPDs should take steps to come into compliance by the December 20, 2018 deadline or confirm that they qualify for either of the two ACA waivers.

Background. On October 31, 2013, the FCC released an [Order](#) implementing portions of the Twenty-First Century Communications and Video Accessibility Act of 2010. The Order requires navigation devices, provided by "covered entities" (including MVPDs) upon request by certain disabled persons, to (i) include features that would audibly describe certain on-screen menu functions to make them accessible to individuals who are blind or visually impaired; and (ii) offer easy access to closed-captioning capabilities.

Navigation devices include converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over MVPD systems using conditional access functionality. An operator that only provides a cable channel providing program listing, often in the form of a scrolling grid, is not subject to the accessibility requirements.

Specifically, the blind and visually impaired must be able to audibly access nine essential functions on navigation devices:

- Channel/Program Selection
- Configuration – Setup
- Configuration – CC Options
- Display Configuration Info
- Input Selection
- Display Channel/Program Information
- Configuration – CC Control
- Configuration – Video Description Control;
- Playback Functions

Power On/Off and Volume Adjust/Mute functions must be made accessible as well, though not necessarily audibly accessible. In addition, navigation devices must provide access to closed captioning through a mechanism reasonably comparable to a button, key, or icon.

Compliance Deadlines. Larger MVPDs were required to comply beginning December 20, 2016. MVPDs with 400,000 or fewer subscribers and for those systems with 20,000 or fewer subscribers (for all except the largest MVPDs) were given an additional two years, until December 20, 2018, to comply.

ACA Waiver. The Media Bureau’s Order granted two separate waivers requested by ACA. First, the Bureau granted ACA’s request for a limited waiver of the accessible user interfaces requirements 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). Additionally, the Bureau granted ACA’s request for a waiver of the accessible user interfaces requirements 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.

MVPDs that qualify are subject to additional notification requirements and conditions as set forth in the Order granting the waivers.

If My Company Does Not Qualify for a Waiver, How Do We Comply? MVPDs must offer accessible navigation devices in the same manner and cost as other navigation devices and must make them available through the same means. While MVPDs must only provide devices “upon request,” the devices must be provided within a time comparable to that within which MVPDs provide navigation devices generally to other customers. MVPDs must also make the availability of compliant accessible navigation devices known in response to customer inquiries regarding service and equipment, and prominently display information about accessible navigation devices on their websites.

MVPDs have flexibility to decide which of the devices they offer will contain accessibility features, but they must provide the accessible device at no additional charge. For example, if the only accessible device an MVPD makes available is a more expensive device being offered by the MVPD because of its sophisticated features, and a blind or visually impaired consumer requests an accessible lower-end device, then the MVPD must provide the accessible device with the sophisticated features at the lower price. In this situation, however, the MVPD may verify the requesting subscribers’ disability. MVPDs can also rely on separate equipment or software (e.g., a tablet with an accessibility app) to meet their compliance obligations.

Other Compliance Defenses. To the extent MVPDs can demonstrate that compliance is not “achievable,” they would have a defense against compliance complaints. Achievability is determined based on a four-factor analysis that examines the nature and cost of compliance, the technical and economic impact on the entity, the entity’s type of operations, and the extent to which they already offer accessible services or equipment. MVPDs may also proactively raise an achievability defense.

If you have questions regarding the FCC’s accessibility rules, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com or Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com.

National EAS Test Form 3 Due November 19, 2018

As detailed in the [Public Notice](#) released by the FCC’s Public Safety and Homeland Security Bureau, all Emergency Alert System (“EAS”) Participants, including cable operators, must report detailed information about their performance in the national EAS test held on October 3, 2018 by filing their EAS Test Reporting System (“ETRS”) Form Three by **November 19, 2018**.

Background. On October 3, 2018, in conjunction with FEMA, the FCC conducted a National Test of the EAS system. EAS Participants are required to report the results on the National Test to the FCC through three forms:

- Form 1 – collects identifying information, including system information and EAS point-of-contact information and was due prior to the test.
- Form 2 – collects “day of test” data, including whether the EAS National Test alert code was received and rebroadcast, and was required to be filed on October 3, 2018.
- Form 3 – collects detailed “post-test” data, including information regarding receipt and rebroadcasting of the alert code, and is due November 19, 2018.

ETRS Requirements. Under the FCC’s EAS rules, EAS Participants must file detailed post-test data on ETRS Form Three within 45 days following a nationwide EAS test. Accordingly, EAS Participants must submit Form Three by November 19, 2018.

If you have questions about EAS or about completing the ETRS forms, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

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