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## UPDATE October 29, 2019

### **FCC Grants Google Fiber Limited Waiver of User Interface Accessibility Rule**

#### **Order Serves as a Reminder that MVPDs Must Comply with Accessibility Requirements**

Earlier this fall, the FCC released an [Order](#) granted Google Fiber's petition for a limited waiver of the FCC's accessible user interfaces rules. Specifically, the waiver covers four of the nine functions used for the display or selection of MVPD programming that must be made audibly accessible: (i) activating video description (for certain programming); (ii) adjusting the presentation and display of closed captioning; (iii) display of current configuration options; and (iv) activating set-top box configuration options.

This waiver serves as an important reminder that the FCC's accessible user interface rules have been in effect for smaller and mid-sized MVPDs since December 2018. All small and mid-sized MVPDs must be in compliance or confirm that they qualify for either of the two ACA waivers described below. **Importantly, the rules include a website disclosure requirement.**

**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 MVPD 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.

**Google Waiver.** Google Fiber sought a waiver for four of the nine functions, arguing that the (i) activating video description (for certain programming); (ii) adjusting the presentation and display of closed captioning; (iii) display of current configuration options; and (iv) activating set-top box configuration options were of limited in impact and infrequently accessed. Further, Google Fiber explained that it would be required to reengineer its set-top boxes.

The FCC granted Google Fiber's petition, finding that it was in the public interest. However, the FCC did not agree with Google Fiber's argument that the waiver should be granted because the functions were limited in impact and infrequently accessed. Rather, the FCC explained that providing accessibility via the Google Fiber TV app solution is a reasonable alternative to spending the time and resources to update equipment that will soon be replaced.

Google Fiber must make the first two functions (activating video description and adjusting presentation and display of closed captioning) audibly accessibly by December 19, 2019. The last two functions (display of current configuration options and activating set-top box configurations) must be made audibly accessible no later than December 19, 2020. Google Fiber must also provide biannual status reports in 2020 to update the FCC of its efforts to achieve these goals.

**ACA Waiver.** The FCC previously [granted](#) two separate waivers requested by ACA in 2018. 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](mailto:sfriedman@cinnamonmueller.com) or Bruce Beard at (314) 394-1535 or [bbeard@cinnamonmueller.com](mailto:bbeard@cinnamonmueller.com).

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