

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accessibility of User Interfaces, and Video)	MB Docket No. 12-108
Programming Guides and Menus)	
)	
Accessible Emergency Information, and)	MB Docket No. 12-107
Apparatus Requirements for Emergency)	
Information and Video Description:)	
Implementation of the Twenty-First Century)	
Communications and Video Accessibility Act)	
of 2010)	

AMENDED PETITION FOR LIMITED WAIVER OF GOOGLE FIBER INC.

Google Fiber Inc. (“Google Fiber”) hereby submits this Amended Petition for Limited Waiver, which amends its Petition for Limited Waiver of the Commission’s navigation device audible accessibility obligations, filed on December 19, 2018, and attached hereto as Exhibit A.¹ As set forth below, Google Fiber continues to seek a limited waiver of four less frequently used audible accessibility obligations, but now seeks a waiver of shorter duration for two of them.

Google Fiber’s original petition requested a limited waiver of four audible accessibility obligations until the sooner of two years of the date of the petition, or the date on which it completed the transition of its set-top boxes to a new operating system. At the time, Google Fiber was in the process of transitioning its set-top boxes to the Android operating system.

In the intervening months, and for business reasons having nothing to do with accessibility issues, Google Fiber has decided not to proceed with the planned transition to

¹ Petition for Limited Waiver of Google Fiber Inc., MB Docket Nos. 12-108 & 12-107 (filed Dec. 19, 2018).

Android. As a result, Google Fiber will not be able to meet its obligation to provide audible accessibility for the four specified functions through adoption of the Android operating system. Google Fiber's existing navigation devices are nearing the end of their lives and Google Fiber is in the process of determining how it will replace them.

In the meantime, because Google Fiber no longer plans to achieve accessibility through implementation of the Android system, it has examined the possibility of updating its Fiber TV app so that additional features will be audibly accessible through the native and third-party accessibility functions of the mobile devices on which the app runs. As a result of that examination, Google Fiber has determined that it can provide the two most important remaining functions likely within a matter of months, but no later than by the end of 2019. Google Fiber continues to investigate the steps necessary to make audibly accessible to its customers the remaining two functions.

Google Fiber therefore amends its original petition to request a waiver of the audible accessibility obligations with respect to the same four, less-frequently used, functions. But this amended petition seeks a waiver for one year from the date of the original petition for two features:

1. Activating video description.
2. Adjusting the presentation and display of closed captioning.

Google Fiber continues to seek a waiver until the sooner of two years from the date of the original petition, or the date on which it can comply for the other two features:

3. Display of current configuration options.
4. Activating set-top box configuration options.

Google Fiber will provide staff with quarterly updates on its progress in making each of these features audibly accessible.

I. BACKGROUND.

The Commission's accessibility rules mandate that, if achievable and upon request, on-screen menus and guides for the display or selection of multichannel video programming must be audibly accessible in real-time by individuals who are blind or visually impaired.² The deadline for compliance for small entities such as Google Fiber was December 20, 2018.³

The rules further specify that the following "functions" must be made accessible, if achievable and if built into the navigation device and provided as on-screen text menus or guides:⁴

- channel/program selection;
- display of channel/program information;
- setup options;

² 47 C.F.R. § 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).

³ *Media Bureau Reminds Covered Mid-Sized and Smaller MVPDs of December 20, 2018 Accessible User Interfaces Deadline*, Public Notice, 33 FCC Rcd. 11,061 (2018); 47 C.F.R. §§ 79.108(b)(1)–(2), 79.109(c)(1)–(2). Entities covered by the accessible user interfaces rules were required to comply by December 20, 2016, subject to certain exceptions, including those applying to Google Fiber. *See* 47 C.F.R. §§ 79.108(b), 79.109(c).

⁴ 47 C.F.R. § 79.108(a)(2). Google Fiber's set-top boxes do not control input selection, so Google Fiber is not required to make this function audibly accessible. The power on/off, volume adjust, and mute functions must be made accessible by providing at least one mode that does not require user vision or color perception, and permits operation by users with low vision, without relying on audio output. *Id.* Google Fiber makes available to all subscribers a remote control with accessible power and volume controls; in addition, subscribers with certain TVs can control the volume and turn the set-top box off and on from the Fiber TV app. Google Fiber's remote control also has a dedicated "input" button that can be programmed to control the inputs to the subscriber's television.

- closed captioning control and display options;
- video description control;
- current configuration information;
- playback controls (such as play, pause, rewind, fast forward, stop, and record); and
- input source selection.

Google Fiber already complies with the navigation device accessibility rule with respect to what it believes are the most important and most frequently accessed functions specified in the Commission’s rules. Specifically, Google Fiber makes available to its subscribers an in-home streaming service through its “Fiber TV” app, which is available for iOS and Android devices. The Fiber TV app permits subscribers to perform many set-top box functions using their mobile devices as remote controls.⁵ By using the native and third-party accessibility features of mobile devices, like screen readers, Google Fiber 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. Specifically, when using a screen reader with the Fiber TV app, Google Fiber customers can access functions that allow them to:

- select channels and programs;
- display channel and program information;
- enable and disable closed captioning; and

⁵ Google Fiber customers may also access two varieties of over-the-top streaming options apart from the in-home streaming described above. One can be accessed using the Fiber TV app. Another relies on third party apps on either a mobile device or on TV peripherals such as Apple TV, Roku, and Fire Sticks. Each of these options provides audible accessibility for some, but not all, functions specified by the Commission—and for most, but not all programming available through Google Fiber’s systems. For simplicity’s sake, we limit our discussion herein to Google Fiber’s in-home streaming service. The waivers requested herein, however, would bring both of these other streaming options into substantial compliance as well.

- access playback functions like pausing, rewinding, and fast-forwarding.⁶

This solution, however, cannot currently provide subscribers with audibly accessible activation of video description on the Secondary Audio Program (at least for some programming),⁷ closed captioning configuration options, display of current configuration options, or set-top box configuration options.

II. THE COMMISSION SHOULD TEMPORARILY WAIVE AUDIBLE ACCESSIBILITY OF CERTAIN SPECIFIED FUNCTIONS.

A Commission rule may be waived for “good cause shown.”⁸ In particular, a waiver is appropriate “where particular facts would make strict compliance inconsistent with the public interest.”⁹ In addition, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy” on an individual basis.¹⁰ Such a waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹¹

Here, a waiver is appropriate because the functions that Google Fiber subscribers cannot yet audibly access are limited in number and in impact. Set-top box configuration options are infrequently accessed and even more infrequently modified by subscribers. Since Google Fiber

⁶ The Fiber TV app also allows customers to access many other functions *not* specified under the rules that are available on its set-top boxes, such as managing individual and series recordings, viewing recorded shows, and watching “on demand” content.

⁷ Certain third-party apps provide audibly accessible video description functionality via mobile device or TV peripheral accessibility features (like screen readers). Google Fiber has not surveyed all third-party apps through which its subscribers can access programming to determine which ones include this functionality.

⁸ See 47 C.F.R. § 1.3.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹¹ *Northeast Cellular Tel. Co.*, 897 F.2d at 1166.

has a limited number of video subscribers to begin with, it expects few if any of its customers to require access to these particular functions.

Google Fiber has also taken steps to minimize this deficiency. It has, for example, trained its installation technicians to adjust set-top box configuration options during installation appointments and, if necessary, during follow-up in-home service calls. It has also trained its customer service agents to assist subscribers in taking the necessary steps to adjust these configurations themselves. Google Fiber installation technicians can also assist subscribers that have universal remote controls in programming shortcuts to certain configuration options. Finally, Google Fiber has customer service agents with specialized accessibility training who can assist subscribers with determining if they have a need for other accessibility solutions.¹²

Set against this minimal and at least partially mitigated deficiency, the unreasonableness of any alternatives to the requested waiver becomes apparent. The most obvious alternative would be for Google Fiber to re-engineer its set-top boxes or provide new ones. Because of the unique nature of Google Fiber's network, however, this alternative would entail diverting significant funds, time, and resources for obsolete, end-of-life devices.

When Google Fiber first began offering broadband and video service, it made an engineering decision to offer its own unique, "bespoke" operating system and equipment. While this had many advantages, it also means that Google Fiber cannot purchase compliant navigation devices "off the shelf." Today, Google Fiber's custom-built navigation products are at the end of

¹² Google Fiber's specialized customer service team is also trained to assist customers in adding the Fiber TV app to their existing mobile devices. If a customer does not have a mobile device that can support the Fiber TV app, Google Fiber will make a handheld device available to the customer, and assist in configuring that device to enable the audible accessibility features the customer desires.

their lives and are no longer being manufactured. Google Fiber has begun the process of determining how it will replace them.

Though it may be theoretically possible for Google Fiber to re-engineer its existing navigation devices to fully comply with the Commission's accessibility rules, doing so would cost a significant amount of money, especially when compared to the size of Google Fiber's video customer base. It would require significant diversion of engineering resources from other projects. And it could not be done overnight. Such re-engineering would require more than a year of software development and testing before the compliant solution would be available. Indeed, it might end up taking longer than the duration of this waiver. Most importantly, *all of this cost and effort would be wasted, because the equipment is no longer being manufactured.*

Google Fiber's planned transition to the Android operating system is not proceeding, and it is currently investigating potential alternatives. In the interim, 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 2019.¹³ It is continuing to investigate how it can make additional features audibly accessible, but will meet that compliance obligation within two years of the date of its original petition. Therefore, Google Fiber requests only a limited waiver of the TV navigation device accessibility rules, for those functions that cannot be activated using in-home streaming on the Fiber TV app—either today or by the end of 2019—and only until it has completed its transition to a system that can fully comply with the Commission's rules, but for no more than two years from the filing date of its original petition in any event.

¹³ Again, for simplicity's sake, we base our waiver on the functions required to make *in-home streaming* fully compatible.

III. CONCLUSION.

The Commission should grant the requested limited and temporary waiver. Doing so will permit Google Fiber to continue to make audibly accessible the most important and frequently accessed functions *without* having to retrofit end-of-life equipment.

Respectfully submitted,



Fleur Knowsley
Acting General Counsel
GOOGLE FIBER INC.
1600 Amphitheatre Way
Mountain View, CA 94043

Kristine Laudadio Devine
Michael Nilsson
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW, Eighth Floor
Washington, DC 20036

Counsel to Google Fiber Inc.

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