

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

In the Matter of)	
)	
Accessibility of User Interfaces, and Video Programming Guides and Menus)	MB Docket No. 12-108
)	
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)	MB Docket No. 12-107
)	

PETITION FOR LIMITED WAIVER OF GOOGLE FIBER INC.

Google Fiber Inc. (“Google Fiber”) hereby requests a waiver of the Commission’s navigation device audible accessibility obligations, but only with respect to certain functions required by the rules and only for a limited time. Google Fiber already provides audible accessibility for what it believes are the most important and most frequently accessed functions specified under the Commission’s rules. It seeks a waiver with respect to four less frequently used functions:

- (1) activating video description (only for certain programming);
- (2) display of current configuration options;
- (3) activating set-top box configuration options; and
- (4) adjusting the presentation and display of closed captioning.

It seeks this waiver only until it completes the transition of its more traditional “set-top boxes” to an operating system capable of full compliance, but in any event for no more than two years from the date of this request.

Grant of this waiver will enable Google Fiber customers to continue audibly accessing the commonly used and critical functions *without* requiring Google Fiber to engage in a costly, disruptive, and wasteful retrofit of equipment nearing obsolescence.

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.¹ The deadline for compliance for small entities such as Google Fiber is December 20, 2018.²

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:³

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

¹ 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).

² *Media Bureau Reminds Covered Mid-Sized and Smaller MVPDs of December 20, 2018 Accessible User Interfaces Deadline*, Public Notice, DA 18-1132, MB Docket No. 12-108 (Nov. 5, 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).

³ 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.

- setup options;
- 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 device as a remote control.⁴ 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;

⁴ 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.

- enable and disable closed captioning; and
- access playback functions like pausing, rewinding, and fast-forwarding.⁵

This solution, however, cannot provide subscribers with audibly accessible activation of video description on the Secondary Audio Program (at least for some programming),⁶ display of current configuration options, set-top box configuration options, and closed captioning configuration options.

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

A Commission rule may be waived for “good cause shown.”⁷ In particular, a waiver is appropriate “where particular facts would make strict compliance inconsistent with the public interest.”⁸ In addition, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy” on an individual basis.⁹ Such a waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁰

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 and closed captioning configuration options are infrequently accessed and even more infrequently modified

⁵ 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.

⁶ 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.

⁷ See 47 C.F.R. § 1.3.

⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁰ *Northeast Cellular Tel. Co.*, 897 F.2d at 1166.

by subscribers. Since Google Fiber 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 these particular configurations 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. Google Fiber installation technicians can also assist subscribers that have universal remote controls in programming shortcuts to certain configuration options, including activation of the Secondary Audio Program. Finally, Google Fiber customer service agents with specialized accessibility training who can assist subscribers with determining if they have a need for an alternative means of accessing programming with video description, including through over-the-top applications or by streaming content from a mobile device to their television.¹¹

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."

¹¹ Google Fiber's specialized customer service team is also trained to assist customers in adding the Fiber TV app to their existing mobile device. 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.

Today, Google Fiber’s custom-built navigation products are nearing the end of their life. Because of the pending obsolescence of existing devices, and for separate business reasons, Google Fiber has decided to decommission this equipment and replace it with equipment compatible with the Android operating system. That transition has been planned for some time, but the deployment timeline has been extended due to factors out of Google Fiber’s control.

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 was 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 Google Fiber is in the process of decommissioning this very equipment.*

Google Fiber’s new, Android-compatible equipment can be made fully compatible with the audible accessibility rules, including with respect to every required function. When the transition is completed, therefore, these devices will enable Google Fiber to comply fully with the audible accessibility requirements. The transition to Android, however, will not be fully complete for two years—though, during the transition, some accessibility functionalities will be available sooner than others.¹² 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

¹² Again, for simplicity’s sake, we base our waiver on the functions required to make *in-home streaming* fully compatible, as the functions available using that service may or may not correspond with the functions initially available as Google Fiber begins to roll out its Android-compatible devices.

streaming on the Fiber TV app, and only until it has completed its transition to an operating system that can fully comply with the Commission’s rules—and for no more than two years in any event.

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,



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

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

Counsel to Google Fiber Inc.

December 19, 2018