



April 15, 2016

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Accessibility of User Interfaces, and Video Programming Guides and Menus, *MB Docket No. 12-108*

Dear Ms. Dortch:

On April 14, 2016, EchoStar Technologies Corporation (“EchoStar”) met with Maria Mullarkey from the Media Bureau and Gregory Hlibok, Eliot Greenwald and Suzy Singleton from the Consumer and Governmental Affairs Bureau. EchoStar was represented by Jennifer A. Manner, Senior Vice President, Regulatory Affairs and Deborah Broderson, Communications Regulatory Counsel & Director.

In the meeting, EchoStar’s presentation followed the attached talking points and discussed the previously-filed EchoStar reply comments from March 7, 2016.

This letter is submitted consistent with the Commission’s ex parte rules. Please direct any questions concerning this filing to the undersigned.

Sincerely,

/s/

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cc: Maria Mullarkey
Gregory Hlibok
Eliot Greenwald
Suzy Singleton
Jennifer A. Manner

Closed Captioning Display FNPRM

Overview

- The FCC's proposed closed captioning rules are premature. The consumer electronics industry is actively engaged in deploying new accessibility features by December 2016; the Commission should not adopt new regulations until this next wave of consumer-focused innovation is available for all stakeholders to assess and determine if additional regulation is required.
- If, however, the Commission does adopt its proposed regulations, it should provide at least two years to comply with the rules and expressly allow MVPDs and manufacturers to seek targeted exemptions.

The FCC's Proposed Closed Captioning Display Rules Are Premature and May Be Unnecessary

- The record in this proceeding demonstrates that further rules governing consumer access to closed captioning are not currently required.
- Stakeholders in the consumer electronics industry, including EchoStar, are actively implementing technical and design updates to set-top boxes and digital apparatuses so that closed captioning will be more accessible in future consumer equipment.
 - For example, EchoStar manufactures set-top boxes that allow consumers to turn captions off and on with the touch of a single icon, which streamlines access to captions by reducing time spent navigating lower-level menus.
- Many exciting new accessibility features will not be available until the FCC's December 2016 deadline; thus there will be no opportunity to assess the effectiveness of these innovative technical and design approaches to improving access to captioning before the close of comments in this proceeding.
- Rather than rushing to require manufacturers to develop accessibility solutions that might be rendered irrelevant in December 2016 by already planned innovations, the Commission should ensure that industry can focus on assessing any remaining needed updates to address consumers' accessibility needs.
 - Only once the December 2016 deadline passes can an adequate review be conducted to determine if the public interest requires the adoption of additional rules.



If the FCC Nonetheless Adopts New Rules, It Should Allow at least Two Years for Compliance

- If the Commission does adopt additional regulations, MVPDs and manufacturers should be given two years to comply with any rule changes.
 - The Commission has “generally afforded manufacturers two years to comply with accessibility requirements under the CVAA;”¹ given the potential complexity of the proposed rules, this standard is also appropriate here.
 - Enhancing accessibility features in set-top boxes and digital apparatus such as EchoStar’s one-touch caption access raises engineering challenges that take time and resources to address.
 - Manufacturers have already established engineering standards to meet the December 2016 closed captioning requirements; it would be unreasonable to require manufacturers to revisit these requirements this close to that deadline.
- An accelerated compliance deadline would minimize the opportunity for development and testing of accessibility solutions, and, more importantly, increase the risk of introducing imperfect solutions into the market that could confuse or frustrate consumers.

Industry Should Be Able to Seek an Exemption of Any Adopted Rules Based on Technical Feasibility and Achievability

- Any new accessibility rules should allow manufacturers and MVPDs to seek an exemption based on the achievability or technical infeasibility of compliance.
 - The Commission has similar allowances for exemptions in place for other accessibility rules, and the same technological challenges that supported previous allowances would be present in the proposed rules.
 - Providing an exemption mechanism would allow MVPDs and manufacturers to bring to the Commission’s attention technical and other issues not considered in drafting the final regulations.
- As in other regulatory frameworks, allowing exemptions will free all stakeholders, including consumers, FCC staff and industry, to devote their energies to addressing genuine accessibility compliance concerns.

Rather than adopting the proposed rules, the Commission should encourage the innovation in accessibility features for set-top boxes and digital apparatus that is already underway.

¹ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 ¶ 12 (2013).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF ECHOSTAR TECHNOLOGIES CORPORATION

EchoStar Technologies Corporation (“EchoStar”) respectfully submits these reply comments in response to the Commission’s *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-captioned proceeding. In the *FNPRM*, the Commission seeks comment on its proposal to require device manufacturers and multichannel video programming distributors (“MVPDs”) to provide readily accessible user display settings for closed captions.¹ The Commission should not adopt its proposed rules, which are premature in light of the major revisions to the FCC’s accessibility regime that go into effect later this year. If the Commission does adopt additional accessibility regulations, it should give industry at least two years to comply and allow MVPDs and manufacturers to seek targeted waivers on grounds of achievability and technical infeasibility.

EchoStar agrees with the majority of commenters in this proceeding that further rules governing consumer access to closed captioning are not necessary.² Along with other manufacturers and MVPDs, EchoStar is proud to be part of active industry efforts to improve

¹ See *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 (2015).
² See Comments of the Telecommunications Industry Association (Feb. 24, 2016) (“TIA Comments”); Comments of AT&T Services, Inc. (Feb. 24, 2016) (“AT&T Comments”); Comments of the National Cable & Telecommunications Association (Feb. 24, 2016) (“NCTA Comments”); and Comments of the Consumer Technology Association f/k/a the Consumer Electronics Association (Feb. 24, 2016) (“CTA Comments”).

device accessibility for all consumers. For example, consumers are already able to select EchoStar devices that allow convenient, one-touch access to closed captioning. On most of EchoStar's Hopper DVRs, users can quickly turn closed captions off and on with the touch of an icon located on a top level menu after pressing an "options" button. While industry continues to make progress in improving accessibility, device manufacturers and MVPDs are currently in the midst of significant redesigns of both set-top boxes and digital apparatus needed to comply with the revisions to the Commission's accessibility rules that go into effect on December 20, 2016. As several commenters noted, it would be premature for the Commission to adopt additional accessibility compliance regulations now without allowing stakeholders an opportunity to assess the effect of the significant rule changes that go into effect in less than ten months.³ A better approach than adopting rules now would be to allow all parties—including consumers, manufacturers, and MVPDs—a reasonable time frame after December 2016 to evaluate the need for additional accessibility requirements.

If, despite the lack of a demonstrated need for new rules, the Commission determines that additional regulations are required to govern user display settings for closed captions, manufacturers and MVPDs should be given at least two years to comply with any rule changes.⁴ EchoStar has been able to introduce convenient one-touch access to closed captioning on some devices because it has been able to devote time and resources to solving this not-insignificant engineering challenge. It would be unrealistic to require manufacturers to undertake a significant re-engineering of their menus to meet a deadline that is already less than ten months away.

³ See TIA Comments at 1; CTA Comments at 7-8; AT&T Comments at 5; NTCA Comments at 5.

⁴ See TIA Comments at 2; AT&T Comments at 5-6. CTA recommended a three year compliance deadline. CTA Comments at 9.

Although the consumer groups make unsupported references to the proposed changes as “small software modifications,” in fact these changes could require extensive coordination efforts among a number of internal and external teams.⁵ Requiring across-the-board changes to user display settings on short notice, on top of the already significant burdens manufacturers and MVPDs face to ensure compliance with previously-adopted accessibility requirements, would strain engineering resources and increase the risk of introducing imperfect solutions into the market that could confuse or frustrate, rather than help, consumers.

Finally, any new rules the Commission adopts should also incorporate a mechanism that would provide an opportunity for manufacturers and MVPDs to seek a waiver based on achievability or technical infeasibility of compliance.⁶ Targeted exemptions, based on the same stringent standards the Commission already has in place for other accessibility rules, would allow industry stakeholders to bring to the Commission’s attention technical and other issues that might not have been considered in drafting the final regulations. Failing to provide for waivers of newly-adopted closed captioning user display settings rules would frustrate the purpose of the Twenty-First Century Communications and Video Accessibility Act, which was to increase the access of persons with disabilities to modern communications.⁷ Congress specifically provided that industry should be able to demonstrate that compliance with a specific closed captioning requirement was not achievable, while allowing manufacturers and MVPDs to devote their resources to ensuring compliance using feasible devices and solutions. Granting waivers will also reduce the number of complaints objecting to the failure to achieve a technically impossible

⁵ Comments of Consumer Groups and RERC in Response to Second FNPRM at 5 (Feb. 24, 2016).

⁶ 47 U.S.C. § 303(u), 303(u)(2).

⁷ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 205 (as codified at 47 U.S.C. § 303).

compliance standard, which in turn will free consumers, FCC staff and industry to address genuine compliance concerns.

EchoStar is committed to fully comply with the Commission's December 20, 2016 deadline for existing accessibility requirements. Adopting new rules governing access to closed captioning displays would add unplanned complexity (including the need for new specifications and new test creation) to an already challenging engineering effort to meet the existing deadlines. New rules are also premature given the significant changes to the accessibility mechanisms coming to the set-top box and digital apparatus marketplace. If the Commission does elect to adopt new rules, it should provide sufficient time for manufacturers and MVPDs to develop clear specifications and design supportable devices, software and documentation and allow industry to seek waivers for those use cases in which compliance is technically infeasible.

Respectfully submitted,

EchoStar Technologies Corporation

/s/ Jennifer Manner

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March 7, 2016