

ALERT

FCC Implements Sweeping Rules for Video Programming User Interfaces

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On October 31, 2013, the Federal Communications Commission (FCC or Commission) released its Report and Order and Further Notice of Proposed Rulemaking (Order and FNPRM) implementing rules for accessible user interfaces for viewing video programming under Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The Order applies Section 205 to "navigation devices," such as set-top boxes, devices with CableCARD slots, and cable modems, and requires them to make on-screen text menus and guides for the display or selection of video programming accessible for the blind or visually impaired, if achievable. In turn, the Commission applies Section 204 to non-navigation device digital apparatus designed to receive or play back video programming, such as mobile devices, PCs, televisions, and removable media players, and requires these devices to make built-in functions, on-screen text menus, and other visual indicators accessible to the blind or visually impaired, if achievable.

The dividing line for whether Section 204 or 205 applies to a device hinges on whether it qualifies as a "navigation device" per FCC Rule 76.1200, which defines them as "devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems." In the Order, the Commission clarifies that it did not "intend[]" the term [navigation device] to encompass every device with the ability to access the Internet." Instead, the Order limits navigation devices to those which utilize multichannel video programming distributor (MVPD)-controlled conditional access technology in order to receive "MVPD-offered multichannel video programming and other services."

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The Commission determined that professional and commercial equipment and public safety and enterprise equipment are outside the scope of Sections 204 and 205.

Devices covered by Section 204 must make accessible the 11 essential functions identified by the Video Programming Accessibility Advisory Committee (VPAAC): (1) power on/off, (2) volume adjust and mute, (3) channel/program selection, (4) display channel/program information, (5) configuration—setup, (6) configuration—closed captioning control, (7) configuration—closed captioning options, (8) configuration—video description control, (9) display configuration information, (10) playback functions, and (11) input selection. In addition, when these functions are accessed through on-screen menus, they must be accompanied by audio output. A device's inclusion of a VPAAC function triggers the accessibility obligation, although the Order clarifies that covered devices are not required to include these functions. Devices covered by Section 204 must also provide a button, key, icon, or comparable mechanism to allow access to closed captioning and video description. The Order also clarifies that device manufacturers are responsible for the accessibility of user interfaces of pre-installed video programming applications, such as Netflix, Hulu, or Amazon.

Devices covered by Section 205 must make audibly accessible 9 of the 11 VPAAC functions if accessed through on-screen guides or text menus. The remaining two functions, power on/off and volume adjust and mute, must still be made accessible, though not necessarily audibly accessible. Importantly, entities covered by Section 205 must provide accessible devices only "upon request." Generally, these devices must be provided within a "reasonable time" and without burden on the requesting party. Section 205 devices must also provide a button, key, icon, or comparable mechanism to allow access to closed captioning, but not video description.

The FNPRM proposes additional rules for device manufacturers subject to Sections 204 and 205. Specifically, the Commission:

- Seeks comment on adopting a definition of "usable" as applied to apparatus covered under Section 204 consistent with the definition of that term as used in other CVAA contexts; as well as requiring entities covered by either Section 204 or 205 to provide accessible product information, instructions, bills, technical support, user guides, and other documentation;
- Proposes that Section 205 manufacturers inform consumers about available accessible devices and prominently display accessibility information on their websites, and seeks comment on notification requirements for Section 204 manufacturers;
- Seeks comment on whether covered apparatus must have a button, key, icon, or comparable mechanism to allow access to secondary audio streams for audible emergency information;
- Seeks comment on whether the Commission should require covered entities to facilitate the ability of viewers to locate user display settings for closed captioning; and
- Seeks comment on sources of authority to require MVPDs to include information for public, educational, and government (PEG) programming on guides and menus, and other issues related to such a requirement.

The rules under both Section 204 and 205 are effective three years after publication of the Order in the Federal Register. Comments and reply comments on the FNPRM are due 60 and 90 days, respectively, after publication in the Federal Register.