

ALERT

Readily Accessible Closed Captioning Requirements Take Effect on September 16, 2024

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The Federal Communications Commission's (FCC or Commission) *Closed Captioning Display Settings Report and Order* (Order) takes effect on September 16, 2024. Subject to Office of Management and Budget (OMB) approval, covered entities will have approximately two years to comply with the new requirements.

Under the Order, manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) must make closed captioning settings readily accessible to individuals who are deaf or hard of hearing. Moving forward, the FCC will evaluate several factors to determine whether covered entities' closed captioning settings are readily accessible.

Covered manufacturers and MVPDs have until at least August 17, 2026, to come into compliance. Following OMB review of the rule's requirements, the Media Bureau will publish another Public Notice to announce the compliance date.

Background

The Commission codified closed captioning requirements in 1991, following Congress' Television Decoder Circuitry Act of 1990 (TDCA), which required television receivers to contain built-in decoder circuitry designed to display closed captioning. In 2000, the FCC developed technical standards to display closed captions on digital television receivers and allow viewers to change caption font, color, background, and size. Since then, Congress has broadened the closed captioning requirements through the Twenty-First Century

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Communications and Video Accessibility Act of 2010 (CVAA).

The Commission laid the foundation for the Order by explaining that it has authority under the TDCA to require that closed captioning display settings be readily accessible to consumers.

“Readily Accessible” Closed Captioning: What Does It Mean and Who Is Covered?

In the Order, the Commission adopts a rule requiring covered manufacturers and MVPDs to ensure that customers can readily access user display settings for closed captioning on covered apparatus. The Commission concluded that the benefits associated with readily accessible closed captioning display settings, particularly in a market defined by many different devices and programming options, outweighed the costs.

Covered entities include MVPDs and manufacturers of covered devices, defined as “apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size.” There are several exceptions: third-party, pre-installed applications, apparatus exempt from closed caption decoder circuitry or capability, and equipment for which closed captions are not feasible or has closed caption requirements waived.

The FCC gives covered entities and MVPDs flexibility to meet this obligation. According to the Commission, this approach will alleviate challenges faced in closed captioning access and allow viewers to adjust the font, color, and size, among other features. When assessing whether settings are readily accessible, the FCC will analyze several factors: proximity, discoverability, previewability, and consistency and persistence:

- **Proximity:** Covered entities and MVPDs must “place ... the closed caption display settings ... in one area of the settings (either at the operating system or application level) that is accessed via a means reasonably comparable to a button, key, or icon.” The FCC explained that this approach minimizes the number of steps, devices, or applications consumers need to access closed caption display settings. Closed captioning primarily through voice control would likely not be proximate, because many consumers who are deaf or hard of hearing would have difficulty accessing closed captions through voice activation.
- **Discoverability:** Covered entities and MVPDs “must: (1) conduct usability testing to determine if caption display settings can be easily found by working with consumers and disability groups as part of the testing process; (2) make good faith efforts to correct problems identified during the consumer testing process; and (3) train customer-facing employees on how to advise customers with regard to caption display settings.” The FCC does not specify what type of training covered entities must provide.
- **Previewability:** The Commission defines “previewability” as “whether viewers are able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings.” The FCC notes that this will allow viewers to see how closed captioning settings correspond to the program the viewer is watching.

- **Consistency and Persistence:** First, MVPDs providing navigation services “must ‘expose closed caption display settings via an application programming interface (API) that an over-the-top app provider can use upon launch of their app on the device.’” The API must allow the provider to choose to use device-level settings. Covered entities must notify app developers about the API or similar methods. Second, MVPDs providing their video programming app on third-party devices will use operating system-level closed caption settings upon launch of the app. Third, manufacturers must ensure the apparatus renders these settings available through an API or similar method.

Waivers and Exemptions: Achievability and Technical Feasibility

The Commission recognized certain exemptions and said it would consider waivers on a case-by-case basis:

- **Achievability:** Covered apparatus with picture screens less than 13 inches in size must be equipped with built-in caption decoder circuitry or capability designed to display closed captioned video programming if the requirements are achievable. The FCC, on a case-by-case basis, will determine whether compliance is achievable under certain factors including (1) the nature and cost of compliance; (2) technical and economic impact on the operation of the manufacturer or provider and specific equipment; (3) the types of operations of the manufacturer or provider; and (4) the extent of accessible services, degrees of functionality and features, and pricing. If a covered entity believes it is not achievable to comply with the readily accessible rule, it can seek a determination by the Commission or raise as a defense to a complaint or an enforcement action.
- **Technical Feasibility:** The requirements set by 303(u) of the Act, mandating that covered apparatus be equipped with built-in closed caption decoder circuitry or capability, applies if “technically feasible.” Covered entities seeking to show that compliance is technically infeasible must show that design changes are not physically or technically possible.

Looking Ahead: Coming into Compliance

Compliance with the rule will not be required until at least August 17, 2026. After the OMB completes its review of the rule’s requirements, the FCC Media Bureau will publish a subsequent Public Notice to announce the compliance date.

Wiley’s Media Practice has extensive experience counseling clients on closed captioning and other broadcast-related issues. If you have any questions or would like more information, please contact one of the attorneys listed on this alert.