Space Bureau, shall conduct regular audits of the information submitted by providers in their Broadband Data Collection filings. The audits:

(1) May be random, as determined by the Office of Economics and Analytics; or

(2) Can be required in cases where there may be patterns of filing incorrect information, as determined by the Office of Economics and Analytics.

* * * * *

(d) * * *

(6) If the parties are unable to reach consensus within 60 days after submission of the provider's reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal. After the affected provider reports on the status of these efforts (including any amended report submitted prior to the 60-day deadline), the Commission shall have 90 days to review the evidence and make a determination, either:

* * * * *

(e) * * *

(5) Commission staff will resolve the challenge within 90 days following the 60th day after which the provider is notified of the challenge (*i.e.,* the deadline for submitting challenge rebuttal data), except that, should the Office of Economics and Analytics (OEA) request supplemental information from a provider after receiving the provider's initial challenge response, the Commission will resolve the challenge within 90 days following the 60th day after which staff request such supplemental data (*i.e.,* 90 days after the deadline for when the supplemental data is due to OEA).

* * * * *

(f) * * *

(6) Commission staff will resolve the challenge within 90 days following the 60th day after which the provider is notified of the challenge (*i.e.,* the deadline for submitting challenge rebuttal data), except that, should the OEA request supplemental information from a provider after receiving the provider's initial challenge response, the Commission will resolve the challenge within 90 days following the 60th day after which staff request such supplemental data (*i.e.,* 90 days after the deadline for when the supplemental data is due to OEA).

* * * * *

§§ 1.7004 through 1.7010 [Amended]

■ 3. In addition to the amendments set forth above, in 47 CFR part 1, remove the text ''Digital Opportunity Data Collection'' wherever it appears and add in its place the text ''Broadband Data Collection'' in §§ 1.7004 through 1.70010.

[FR Doc. 2024–16935 Filed 8–14–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 12–108; FCC 24–79; FR ID 235228]

Accessibility of User Interfaces, and Video Programming Guides and Menus

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requires manufacturers of covered apparatus and multichannel video programming distributors to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. This action will further the Commission's efforts to enable individuals with disabilities to access video programming through closed captioning.

DATES:

Effective date: Effective September 16, 2024.

Compliance date: Compliance with 47 CFR 79.103(e) is not required until the Commission has published a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (Order), in MB Docket No. 12–108; FCC 24–79, adopted on July 18, 2024 and released on July 19, 2024. The full text of this document will be available at *https://docs.fcc.gov/public/attachments/FCC-24-79A1.pdf* and via ECFS at *https://www.fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), 1–844–4–FCC–ASL (1–844–432–2275) (videophone).

Synopsis

This Order furthers our efforts to enable individuals with disabilities to access video programming through closed captioning. Closed captioning displays the audio portion of a television program as text on the screen, providing access to news, entertainment, and information for individuals who are deaf and hard of hearing. The Federal Communications Commission requires the provision of closed captioning on nearly all television programming, as well as on a large portion of internet protocol (IP)-delivered programming. Through the Commission's implementation of the Television Decoder Circuitry Act of 1990 (TDCA) and the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), it has made significant progress in enabling video programming to be accessible to persons who are deaf and hard of hearing. Pursuant to the TDCA, the Commission adopted standards for the display of closed captions on digital television receivers, and those standards enable users to customize caption display by changing the font, size, color, and other features of captions. Subsequently, pursuant to the CVAA, the Commission adopted display standards for other video devices, specifically for apparatus designed to receive or play back video programming transmitted simultaneously with sound. However, many consumers continue to have difficulty accessing the closed captioning display settings on televisions and other video devices—a technical barrier that prevents the use and enjoyment of captioning. Today we take steps to alleviate this problem and thereby ensure meaningful access to captioning.

Specifically, the rule we adopt requires manufacturers of covered apparatus [1] and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. We afford covered entities flexibility in how they meet this obligation, and the Commission will determine whether settings are readily accessible to consumers by evaluating the following factors: proximity, discoverability,

[1] As discussed below, the requirements adopted herein apply to devices covered by section 303(u) of the Act, in other words, 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, except that the requirements do not apply to third-party, pre-installed applications that are otherwise covered by section 303(u).

previewability, and consistency and persistence. We adopt a compliance deadline of two years after publication of this Order in the **Federal Register**.

Prior to adoption of the TDCA, consumers needed to purchase a separate TeleCaption decoder device and connect it to a television set in order to display closed captions. The TDCA amended section 303 of the Communications Act of 1934, as amended (the Act), to require that television receivers contain built-in decoder circuitry designed to display closed captioning. It also amended section 330 of the Act to require that the Commission's rules provide performance and display standards for such built-in decoder circuitry. In the TDCA, Congress observed that the availability of televisions with built-in decoders ''will significantly increase the audience that can be served by closed-captioned television'' and outlined the significant benefits of closed captioning for people who are deaf and hard of hearing as well as other segments of the population, including children and older Americans who have some loss of hearing. Congress also mandated in section 330(b) of the Act that the Commission take appropriate action to ensure that closed captioning service continues to be available to consumers as new video technology is developed.

In 1991, the Commission adopted rules that codified standards for the display of closed captioned text on analog television receivers. Following the transition to digital broadcasting, the Commission in 2000 adopted technical standards for the display of closed captions on digital television receivers ''to ensure that closed captioning service continues to be available to consumers.'' In particular, the Commission adopted with some modifications section 9 of EIA–708, an industry standard addressing closed captioning for digital television, which allows the caption display to be customized for a particular viewer by enabling the viewer to change the appearance of the captions to suit his or her needs. When the Commission adopted the technical standards, it explained that the ''capability to alter fonts, sizes, colors, backgrounds and more, can enable a greater number of persons who are deaf and hard of hearing to take advantage of closed captioning.''

In 2010, Congress enacted the CVAA to ''update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.'' Section 203 of the CVAA broadened section 303(u) of the Act, which previously applied to ''apparatus designed to receive television pictures broadcast simultaneously with sound,'' to cover ''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.'' Such apparatus must ''be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.'' In 2012, the Commission adopted performance and display standards for such built-in decoder circuitry in accordance with section 330(b) of the Act, and in particular it adopted functional requirements to ensure that consumers can modify caption display features for IP-delivered programming on covered apparatus. These rules require that apparatus provide functionality that allows users to change the presentation, color, opacity, size, and font of captions, caption background color and opacity, character edge attributes, and caption window color. But the rules do not mandate how users access such features on the device. In the Commission's subsequent proceedings on implementing the accessibility requirements of sections 204 and 205 of the CVAA, Consumer Groups described the difficulties consumers who are deaf and hard of hearing face in accessing closed captioning display features on apparatus used to view video programming.

In November 2015, in a Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in the above-captioned docket, the Commission proposed to adopt rules that would require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning, and on the Commission's authority to do so under the TDCA.[2] Among other things, the *Second FNPRM* asked whether the Commission should require the inclusion of closed captioning display settings no lower than the first level of a menu, whether such an approach would provide industry with sufficient flexibility, and whether there are ''alternative ways to implement this requirement.'' In January 2022, the Media Bureau released a Public Notice seeking to refresh the record on the proposals contained in the *Second FNPRM.*[3] While some comments in the refreshed record assert that caption display settings are accessible, others explain that problems with the accessibility of such settings continue to persist.

In January 2023, the Media Bureau released another Public Notice, seeking comment on a proposal in the record that the Commission require compliance with the following factors when determining whether captioning display settings are readily accessible: proximity, discoverability, previewability, and consistency and persistence.[4] On March 14, 2024, NCTA and a coalition of consumer groups filed in the record a joint proposal to make caption display settings readily accessible.[5] The Media Bureau released a Public Notice seeking comment on the joint proposal.[6]

Below, we first find that we have authority under the TDCA to require that closed captioning display settings are readily accessible to consumers. Second, we adopt the requirement that such settings must be ''readily accessible,'' and we detail factors the Commission will require when making this determination. Third, we explain our finding that the public interest benefits outweigh the costs for a requirement that the closed captioning display settings be readily accessible. Fourth, we find that the rule we adopt herein applies to the full range of devices covered by section 303(u) of the Act, and that both manufacturers of covered apparatus and MVPDs are responsible for compliance with the rule, except that the requirements do not apply to third-party, pre-installed applications that are otherwise covered by section 303(u). Fifth, we discuss the availability of waivers or exemptions based on achievability and technical

[2] In the *Further Notice of Proposed Rulemaking* in MB Docket No. 12–108, the Commission had previously inquired whether sections 204 and 205 of the CVAA provide the Commission with authority to adopt such a requirement. Given our conclusion herein that our authority derives from the statutory provisions of the TDCA, as codified in sections 303(u) and 330(b) of the Act, we find it unnecessary to reach this issue.

[3] The *January 2022 Public Notice* was published in the **Federal Register**. *See* Federal Communications Commission, Accessibility Rules for Closed Captioning Display Settings, 87 FR 2607 (Jan. 18, 2022).

[4] The *2023 Caption Display Settings Public Notice* was published in the **Federal Register**. *See* Federal Communications Commission, Accessibility Rules for Closed Captioning Display Settings, 88 FR 6725 (Feb. 1, 2023).

[5] The proposal's signatories represent the following organizations: NCTA, National Association of the Deaf, TDIforAccess (TDI), Communication Service for the Deaf, and Hearing Loss Association of America.

[6] The *2024 Caption Display Settings Public Notice* was published in the **Federal Register**. *See* Federal Communications Commission, Accessibility Rules for Closed Captioning Display Settings, 89 FR 20965 (March 26, 2024).

feasibility. Finally, we establish a compliance deadline of two years after publication of the *Third Report and Order* in the **Federal Register**.

Authority. We conclude that the Commission has authority under the TDCA to require that closed captioning display settings be readily accessible to consumers. Section 303(u)(1)(A) of the Act authorizes the Commission to require that ''apparatus designed to receive or play back video programming transmitted simultaneously with sound'' must ''be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.'' Section 330(b) of the Act directs the Commission to adopt rules to ''provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming'' and, ''[a]s new video technology is developed,'' to take such action as it ''determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers.''

We find that sections 303(u) and 330(b) authorize the Commission, in implementing the TDCA, to consider the practical usability of closed captioning features by consumers and to adopt ''performance and display standards'' that will make closed captioning ''available to consumers'' by ensuring the usability of the display options. We find that meaningful access to user display settings ''is essential to making closed captioning 'available' to consumers'' within the meaning of the TDCA.[7] As Consumer Groups explain, ''[i]f a consumer cannot readily locate and use display settings, then closed captioning itself is not truly 'available' because the consumer cannot ensure that captions are rendered in a readable and accessible format,'' and, thus the directive and purpose of the statute will not be fulfilled. Given ''the increased volume and variety of both the programming and devices available to consumers'' today, it is ''more important now than ever'' that the Commission modify its rules to ensure that closed captioning is meaningfully—not just nominally—available to viewers in order to serve Congressional intent.[8] The record shows that expecting consumers to ''search[] for settings which are buried in menus'' is an ''intimidating and frustrating experience.'' [9] Thus, simply including captioning circuitry somewhere in a device is not enough to satisfy the requirements of the statute; for the captions to be ''available'' as Congress intended, consumers must be able to adjust the caption display settings in a manner that makes the captions accessible—*i.e.,* ''available'' to the consumer.

We find that the structure, text, purpose, and history of the TDCA support Commission authority to regulate consumer access to closed captioning display settings. First, the statutory structure and text support this interpretation. Section 303(u)(1)(A) directs the Commission to adopt regulations that, among other things, require (if technically feasible) that covered devices ''be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.'' Section 330(b) directs the Commission to adopt ''performance and display standards'' and to take such action as it deems necessary to ensure that closed captioning continues to be ''available,'' as new technology is developed. Congress did not define the term ''available'' for purposes of section 330(b). We believe that the best reading is to interpret ''available'' to mean that consumers can readily access the various functions and features of closed captioning capability. We find that this reading is supported by the statute as a whole and the surrounding text. Specifically, section 330(b) identifies certain requirements that Commission rules ''shall provide'' in implementing section 303(u), including ''performance and display standards,'' a requirement that is sufficiently broad to encompass regulation of how closed captioning is accessed by consumers. Indeed, Consumer Groups discuss the meaning of the word ''performance'' in the phrase ''performance and display standards,'' explaining that ''[a]n interpretation of the statute that would prohibit the Commission from setting standards for easy access to configuration controls would undermine'' Congress's accessibility goals, and the ''grant of authority to implement performance standards'' provides the Commission with ''substantial discretion'' in adopting requirements ''to specify how users might interact with functions required by those performance standards.'' We agree. By exercising our authority in this manner, we fulfill the statutory requirement to include in our rules ''performance'' standards for closed captioning. In addition, section 330(b) directs the Commission ''[a]s new video technology is developed'' to ''take such action as [it] determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers.'' The ''take such action as [it] determines appropriate'' mandate further supports a broad, rather than narrow, view of the Commission's authority to ''ensure that closed-captioning service . . . continue[s] to be available to consumers''—an objective advanced by ensuring access to closed caption display options. We thus believe this interpretation of the statute best reflects the ordinary meaning of the statute and best serves the statutory purpose, as discussed below.

Second, our interpretation is consistent with the express purpose of the TDCA, which is to increase the number of consumers who can avail themselves of closed captioning, with increased demand spurring the provision of more captioned programming. In enacting the TDCA, Congress stated that ''to the fullest extent made possible by technology,'' persons who are deaf and hard of hearing ''should have equal access to the television medium.'' Third, we observe that the legislative history reveals that Congress believed the TDCA would increase the audience for closed captioned programming and thereby create market incentives for investment in closed captioned programming. If a covered apparatus has the ability to process and display closed captions but does so in a way that makes it practically infeasible or undesirable for consumers to use that capability, the intent of broadening the potential audience for captioned programming is undermined. By requiring that closed captioning performance and display functionality be ''readily accessible,'' we fulfill the purpose of the TDCA and Congressional intent as reflected in the legislative history by ensuring that captions are meaningfully available, and we can increase the likelihood that the audience for closed captioned programming will continue to grow as unmet needs are fulfilled, consistent with the statutory purpose.

We do not agree that relying on sections 303(u)(1)(A) and 330(b) of the Act here is ''a belated Commission reinterpretation of the TDCA.'' [10] To the contrary, the Commission historically has recognized and exercised authority under sections 303(u) and 330(b) of the Act, prior to the enactment of the CVAA, in a manner that supports its exercise of that authority to regulate access to closed captioning display options here. Previously, the Commission concluded that ''[i]t is

[7] *See* Consumer Groups 2016 Comments at 3.

[8] *Id.*

[9] *Id.* at 4.

[10] CTA 2016 Comments at 6–7; CTA 2022 Comments at 9.

essential'' that closed captions be readable, and it relied on sections 303(u) and 330(b) of the Act to adopt closed captioning rules that required consumers to be able to modify settings such as font size and color. Interpreting the TDCA to authorize regulations ensuring that consumers can easily access the required display settings to make closed captions readable, therefore, is entirely consistent with our prior interpretations. For the same reason, there is no logical basis to conclude that Congress, with respect to the TDCA modifications it adopted via the CVAA, interpreted the TDCA as not having granted the Commission authority to regulate access to display settings, as some commenters advocate.

Further, we reject the argument that the penultimate sentence of section 330(b) does not support the adoption of new requirements here because currently there is ''no threat to the availability of closed-captioning service.'' [11] To the contrary, we find that the requirements we are adopting herein are a proper exercise of our authority under section 330(b) because the record shows that the development of new technology for viewing video programming has made it more difficult for consumers to access the necessary caption display settings. Specifically, consumers today watch video programming on a multitude of different devices, and ''it is difficult for consumers to readily anticipate where display settings are located because the location varies depending on the device used.'' [12] With the proliferation of online video programming, a consumer that views captioned video programming using the same application or website on multiple devices may adjust the display settings for one device, only to find that the settings need to be adjusted again when the programming is viewed on a different device.

We also disagree with commenters who argue that the directives of sections 303(u) and 330(b) are satisfied as long as closed captioning circuitry or capability is included somewhere in their devices, that the statute's use of the term ''available'' should be read narrowly to exclude consideration of the accessibility of the closed captioning by consumers,[13] and that section 330(b) does nothing more than ''authorize the Commission to update specifications as necessary to keep up with new video technologies.'' [14] As explained above, Congress used broad language in section 330(b), authorizing the Commission to ''take such action as [it] determines appropriate'' to ensure the continued availability of closed captioning. We thus reject ACA's assertion that the Commission's authority under section 330(b) ''is limited to updating the specific technical requirements identified in the TDCA'' to avoid requiring manufacturers to adhere to ''outdated technical requirements.'' Further, our interpretation best serves the statutory purpose of ensuring that persons who are deaf and hard of hearing ''should have equal access to the television medium.'' Thus, we believe our adoption of a rule ensuring the accessibility of closed captioning display functions falls within the broad scope of this language. The language also informs our interpretation and implementation of our authority under section 303(u) to ensure that video apparatus is ''equipped'' with closed captioning capabilities, which requires both that the apparatus possesses the necessary capabilities and that consumers are able to access them.[15] Thus, our advancement of the objectives identified in section 330(b) also supports our use of section 303(u)(1)(A) authority to adopt the requirements of this order.[16]

We further reject arguments that the statutory language does not permit the Commission to regulate the manner in which consumers are able to access and use such circuitry or capability. AT&T, for example, points to language in section 330(b) directing the Commission to ensure that covered apparatus ''be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval,'' consistent with specific ''signal and display specifications.'' Yet, that text is preceded by the phrase, ''Such rules shall further require,'' which belies the notion that Congress intended to use that language to limit the Commission's authority to the implementation of the identified specifications. To the contrary, we conclude that the reference in section 330(b) of the Act to ''performance and display standards,'' which Congress did not define, includes the regulation of how consumers are able to access and use closed captioning. To interpret the language more narrowly, as some commenters advocate, would have the perverse result of allowing a manufacturer or MVPD to bury those settings so deep in a complicated series of menus that they are not readily accessible, undermining the purpose of the statute to ensure they are ''available to consumers.'' Further, the reference that AT&T highlights in the statute to the ''line 21 of the vertical blanking interval'' relates only to analog transmission. There is no vertical blanking interval in digital transmissions. The digital transition occurred in 2009 for the majority of stations, and the requirement contained in this sentence cannot transfer directly into a digital environment. Thus the requirement contained in this sentence cannot reasonably be read to limit the Commission's authority here. The directive in section 330(b) that the Commission ''take such action as [it] determines appropriate'' supports a broad view of the Commission's authority to ensure that closed captioning ''continue[s] to be available to consumers.''

[11] *See* NCTA 2016 Comments at 4. That sentence reads: ''As new video technology is developed, the Commission shall take such action as [it] determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers.'' NCTA claims that ''the legislative history shows that this particular sentence was not intended to provide additional authority to the Commission, but instead reflects Congress' desire to ensure that the particular technical requirements Congress directed the Commission to adopt would be revised as necessary to keep pace with future technology changes.'' We disagree with NCTA's interpretation of the legislative history. The legislative history that NCTA cites merely indicates an intention to permit the Commission not to impose the same requirements for both older and newer technologies so long as closed captioning remains widely available to consumers.

[12] Consumer Groups 2016 Comments at 7.

[13] NCTA cites as support for its statutory analysis the approach the Commission took in the *TDCA Report and Order* and the *DTV Closed Captioning Order,* but both of those orders are distinguishable. First, the *TDCA Report and Order* was a pre-digital order that also predated the amendment of the TDCA to extend beyond television sets. Second, the *DTV Closed Captioning Order* applied only to DTV receivers.

[14] ACA 2016 Reply at 6.

[15] Interpreting the second to last sentence of section 330(b) to, at a minimum, inform our interpretation and implementation of section 303(u) is consistent with the remaining text of section 330(b). Among other things, that language directs the Commission to adopt rules implementing section 303(u) that ''provide performance and display standards for [ ] built-in decoder circuitry or capability designed to display closed captioned video programming.'' As explained above, the rules we adopt here readily fit within the scope of ''performance and display standards.''

[16] NCTA overstates the significance of certain language from the legislative history of the TDCA as allegedly demonstrating that the Commission is precluded from interpreting the second to last sentence of section 330(b) as a grant of authority. *See* NCTA 2016 Comments at 4, n.13. By its terms, that excerpt is an ''example'' of the relevance of the second to last sentence of section 330(b), rather than an exhaustive description of the role of that provision. That language from the TDCA Senate Report also reinforces the view that, at a minimum, the considerations identified in section 330(b) inform our interpretation and implementation of our authority under section 303(u). Moreover, this legislative history demonstrates our authority to take steps reasonably necessary, as demonstrated above, to ''ensure'' that closed captioning continues to be ''widely available'' to consumers.

Further, Congress's enactment in the CVAA of sections 303(aa) and (bb) of the Act does not undercut the Commission's exercise of its authority under sections 303(u) and 330(b) of the Act. Section 303(aa) contains accessibility requirements for certain digital apparatus functions and features, while section 303(bb) contains accessibility requirements for certain navigation device functions and features. First, we reject suggestions that sections 303(aa) and (bb) are more specific than sections 303(u) and 330(b) and thus are controlling with regard to Commission authority to regulate consumer access to closed captioning display settings. These arguments invoke the general canon of interpretation that ''specific statutory language should control more general language when there is a conflict between the two.'' [17] Such an interpretation would represent a narrowing of the authority that the Commission previously understood itself to have and that it has exercised, and there is no indication that Congress intended the CVAA to have such an effect. It is more consistent with the accessibility objectives of the CVAA to conclude that Congress intended sections 303(u), (aa), (bb), and 330(b) of the Act to be available collectively as a source of Commission authority to pursue disability access objectives.[18] While sections 303(aa)(3) and (bb)(2) specifically address access to closed captioning activation, they are silent regarding access to closed captioning display options.[19] Had Congress intended to curtail the Commission's authority to take further action under section 330(b) to promote the continued availability of closed captioning service, it could have done so explicitly. It did not, and we find it unlikely that Congress intended to do so *sub silentio.*

Second, contrary to the suggestion of some commenters, we find that Congress's decision to require closed caption activation via a mechanism reasonably comparable to a key, button, or icon does not mean that it considered and rejected such a requirement for closed captioning display settings.[20] Rather, as stated above, we find that Congress intended the relevant provisions of the Act—section 303(u), as amended by the CVAA; sections 303(aa) and (bb), added to the Act by the CVAA; and section 330(b), added to the Act by the TDCA—to be available collectively as a source of Commission authority regarding disability access issues. Given Congress's interest in expanding access to video programming through the CVAA, we do not believe that it intended the provisions of that statute to negate the express language of section 330(b) to ensure that closed captions continue to be available to consumers as new video technology is developed, nor the overall intent of the TDCA to bring more programs that are closed captioned into the homes of Americans. Congress required closed caption activation via a certain mechanism in the CVAA, but Congress left it to the Commission's discretion to determine whether and to what extent to regulate other matters pertaining to the ability of consumers to access closed captioning on video apparatus pursuant to its earlier grant of authority, including specifically through establishment of ''performance and display standards.''

Third, we disagree with commenters who contend that Congress would not have needed to adopt provisions in the CVAA directing the Commission to require closed caption activation through a mechanism reasonably equivalent to a button, key, or icon if the Commission already had authority pursuant to the TDCA to regulate access to closed captioning display settings. There are legally meaningful differences in the Commission's authority under section 303(u) as compared to sections 303(aa) and (bb) of the Act, which indicate that Congress intended to give the Commission new authority to accomplish a particular purpose, rather than supplant the Commission's authority to adopt closed-captioning regulations pursuant to a specific legal standard under section 303(u). For example, section 303(u)(1)(A) directs the Commission to adopt closed captioning requirements that apply if compliance is ''technically feasible,'' whereas sections 303(aa)(3) and (bb)(2) contain no such limitation.[21] Additionally, the Commission has statutory authority to exempt certain apparatus from the requirements of section 303(u) that it cannot exercise with respect to the requirements of sections 303(aa)(3) and (bb)(2). Further, the CVAA established deadlines for the Commission to adopt rules initially implementing the requirements of sections 303(aa)(3) and (bb)(2) that differ from those for implementing the CVAA's revisions to section 303(u). There is no logical basis to conclude that the ''button, key, or icon'' requirement in sections 303(aa)(3) and (bb)(2) presupposes the absence of authority in sections 303(u)(1) or 330(b) to adopt different regulations to ensure that closed captioning performance and display functions continue to be ''available'' to consumers. Thus, we conclude that enactment of sections 303(aa)(3) and (bb)(2) does not diminish our authority to adopt the new rule set forth herein.

Finally, as a separate and independent basis of authority, in addition to the TDCA, we find authority to adopt accessibility requirements under sections 4(i) and 303(r) of the Act. The Commission is specifically delegated authority under the Act to require that covered apparatus must ''be equipped'' with closed caption capability and to adopt rules as it ''determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers'' ''[a]s new video technology is developed.'' Ensuring that the required caption capabilities are actually accessible by consumers is essential to fulfill these statutory requirements. Otherwise, if a consumer cannot readily locate and use display settings to ensure that captions are rendered in a readable and accessible format, then closed captioning itself is not truly ''available'' as required under the statute. The rules we adopt today are thus necessary to carry out the specific requirements set forth in sections 303(u) and 330(b) of the Act.

Access to Closed Captioning Display Settings Must Be ''Readily Accessible.'' As proposed in the *Second FNPRM,* we adopt a rule that requires covered

[17] *NCTA* v. *Gulf Power,* 534 U.S. 327, 335–336 (2002).

[18] The stated purpose of the CVAA is ''[t]o increase the access of persons with disabilities to modern communications, and for other purposes.''

[19] Similarly, the provisions in sections 204 and 205 of the CVAA that were not incorporated in sections 303(aa) and (bb) of the Act are silent regarding access to closed captioning display options. Contrary to CTA's suggestion, sections 204 and 205 did not ''express[ ] an intent to limit the Commission's authority'' in this regard. In addition, sections 303(aa)(1) and (2) apply to an unenumerated universe of ''functions'' to be made accessible to individuals who are blind or visually impaired, and thus also are not more specific than sections 303(u)(1)(A) and 330(b) regarding the requirements for closed captioning display options that we adopt here.

[20] This argument invokes the ''expressio unius est exclusio alterius'' canon of interpretation, which ''presum[es] that an omission is intentional where Congress has referred to something in one subsection but not in another.'' *NAB* v. *FCC,* 569 F.3d 416, 421 (D.C. Cir. 2009) (citing *Russello* v. *United States,* 464 U.S. 16, 23 (1983)).

[21] The Commission previously concluded that section 303(bb)(2) contains no limiting language and therefore imposes an unconditional obligation, noting that it does not contain ''upon request'' language or any reference to specific types of individuals found elsewhere in section 205 of the CVAA; lacks language found elsewhere that allows entities to provide required functionalities using separate equipment or software; and is not qualified by the phrase ''if achievable,'' in contrast with other provisions. Section 303(aa)(3) likewise lacks any limiting language.

manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus pursuant to our authority under the TDCA. Congress directed the Commission to provide performance and display standards for built-in decoder circuitry or capability designed to display closed captioned video programming and to take action to ensure that closed captioning continues to be available to consumers as video programming technology evolves. The rule we adopt herein serves these statutory directives. As discussed below, we afford covered entities (MVPDs and manufacturers) flexibility in how they meet this obligation, and the Commission will determine whether settings are readily accessible to consumers by evaluating the following factors, as described in the March 2024 joint proposal: proximity, discoverability, previewability, and consistency and persistence.[22] Below we explain the public interest benefits of these new requirements. We also describe which devices and entities are covered by the rule, set forth exemptions for achievability and technical feasibility, and set a compliance deadline of two years from publication of the rule in the **Federal Register**.

''*Readily Accessible.*'' ''Readily Accessible'' Requirement in General. We first require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus. To determine whether particular settings are readily accessible, the Commission will require compliance with the following factors, which we further define below: proximity, discoverability, previewability, and consistency and persistence.[23] Failure to comply with any of the factors may be deemed a violation of the Commission's rules.[24]

The readily accessible requirement, which the Commission will evaluate based on the four factors, will ensure that consumers who are deaf and hard of hearing can easily access closed captioning display settings, while still giving covered entities flexibility in the manner of compliance.[25] While display settings already may be readily accessible for some devices, using such settings generally has not been easy for consumers.[26] As Consumer Groups explain, ''these functional requirements provide a workable middle ground between strict design mandates and the laissez faire approach called for by industry commenters, allowing the industry substantial flexibility while requiring it to finally address the long-standing gaps in the accessibility of closed captioning display setting interfaces.'' [27] We believe that this approach will alleviate the challenges faced by consumers who are deaf and hard of hearing in accessing closed captioning and will ensure that these viewers can adjust the font, size, color, and other features of closed captions wherever they are watching video programming on devices without the undue complexity experienced today. This approach is also consistent with how the Commission has implemented accessibility requirements for closed captioning activation mechanisms on video devices pursuant to sections 204 and 205 of the CVAA.[28]

Proximity. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are ''proximate.'' For this purpose, ''proximity'' requires that covered entities ''will 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.'' [29] Consumer Groups initially argued that this factor should require access to closed captioning settings in the first level of a menu.[30] Industry objected to this approach as too rigid. Consumer Groups then modified their proposed definition of ''proximity,'' clarifying that it is intended to ensure that consumers need not navigate a lengthy set of steps and/or switch devices or applications to access closed caption display settings.

[22] Although the March 2024 joint proposal does not explicitly reference the previously proposed four factor framework, we believe it fits within that framework. Accordingly, we adopt the contents of the joint proposal as clarifying or modifying the meaning of the previously proposed factors.

[23] We note that ITI expresses vague concerns that the proposal uses terms, definitions, and requirements that ''do not necessarily reflect internationally-accepted practices for this technology . . . .'' Information Technology Industry Council (ITI) 2023 Comments at 2. *See also* CTA/ITI 2023 Reply at 3–4 (stating that any new rules should ''[h]armonize with existing international standards to avoid confusion and imposing additional burdens on companies''); Letter from Rachel Nemeth, Sr. Director, Regulatory Affairs, and Brian Markwalter, Senior Vice President, Research & Standards, Consumer Technology Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 2 (Apr. 28, 2023). Given the lack of specific information in the record as to precisely what rules the Commission should adopt in this area to ensure consistency with international standards, we are unable to take any further action in response to the cited pleadings.

[24] While ACA Connects expresses concern that some of the factors could be contradictory, we believe that is no longer the case given the meaning of the factors we adopt below. In the event that an allegation of non-compliance arises, the covered entity will need to demonstrate how it has complied with the applicable requirements. For example, if there is an allegation that a covered entity has not provided the required employee training discussed below, the entity could, for instance, offer information by providing training materials and a training schedule.

[25] The adoption of flexible factors that we will require in determining if caption display settings are readily accessible should alleviate ACA Connects' concern that rigid standards could ''squelch innovation.'' Similarly, we expect the flexibility inherent within the factors to alleviate ITI's concern that stringent requirements could lead to ''a cluttered, overly-complex user interface'' that could confuse users and have a particular negative impact on individuals with cognitive difficulties.

[26] For example, Consumer Groups note that changing closed captioning settings for the most popular streaming service requires many users to engage in a 10-step process that involves leaving the application and navigating the service's website.

[27] *But see* Letter from J. David Grossman, Vice President, Regulatory Affairs, CTA, and Brian Markwalter, Senior Vice President, Research & Standards, CTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 4 (June 30, 2022) (claiming that these factors ''represent a very heavy regulatory lift that neither the Commission nor industry has properly investigated''). We disagree with CTA's claim, both because any regulatory burden will be alleviated by the flexible nature of the factors, and because the reply comments and subsequent 2023 and 2024 comments and replies did not demonstrate that applying these flexible factors will be unduly costly or otherwise unduly burdensome to industry. To the contrary, we intend the factors to clarify for industry how the Commission will evaluate whether particular settings are readily accessible.

[28] With the exception of a Petition for Reconsideration filed by Consumer Groups regarding use of voice control and gestures for closed captioning activation, no party filed an appeal of the *Report and Order and Further Notice.* We need not address the argument that we lack sufficient notice to adopt the proposed factors, because the Media Bureau subsequently issued the *2023 Caption Display Settings Public Notice* and the *2024 Caption Display Settings Public Notice* and published both documents in the **Federal Register**, giving notice to all interested parties that this proposal was up for consideration. We further note that the Commission's authority to adopt the factors stems from the same authority it has to adopt the readily accessible requirement generally, as discussed above.

[29] Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA—The internet & Television Association, *et al.,* to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 1 (Mar. 14, 2024) (NCTA/Consumer Groups Mar. 14, 2024 Ex Parte). We recognize that the joint proposal was to ''place all accessibility functions—including, but not limited to, the closed caption display settings and caption on/off—in one area of the settings. . . .'' The rules established in this Order, however, do not apply to any accessibility functions other than closed captioning display settings. In addition, the Commission's rules already require that closed captioning and audio description ''can be activated through a mechanism that is reasonably comparable to a button, key, or icon.'' 47 CFR 79.109(a)(1)–(2), (b). We encourage covered entities to make all accessibility functions, including closed captioning display settings and caption on/off, available in the same location.

[30] We recognize that commenters previously evaluated some of what we now deem ''proximity'' as part of the ''discoverability'' factor. The meaning of ''proximity'' that we adopt here is tailored to fit the joint proposal within the four-factor framework.

The subsequent March 2024 joint proposal did not specifically reference that modification and instead further refined the approach to provide that caption display settings should be available in one area of the settings that can be accessed via a means reasonably comparable to a button, key, or icon. We find that requiring proximity pursuant to the revised definition is in the public interest because it will ensure that consumers do not need to complete many steps or switch devices or applications to access closed caption display settings, and it is hereby required by our rules. We believe that the presence of ready access to caption display settings is paramount to the utility of such settings, and the ''proximity'' requirement will further that aim.

Under the approach we adopt today, industry is afforded flexibility in how precisely to ensure that closed captioning display settings are made readily accessible pursuant to the proximity factor, so long as the settings are available in one area that is accessible via a means reasonably comparable to a button, key, or icon. Making closed captioning display settings available solely or primarily through the use of voice control likely would not be considered proximate. In an *Order on Reconsideration,* the Commission previously found that closed captioning activation mechanisms that rely solely on voice control do not fulfill the requirement of sections 204 and 205 of the CVAA and our implementing rules that such mechanism be reasonably comparable to a button, key, or icon. The Commission was persuaded by a Petition for Reconsideration filed by Consumer Groups indicating that voice activation is not simple and easy to use for many individuals who are deaf and hard of hearing. We believe that a similar rationale applies here. We cannot find that caption display settings are reasonably accessible if many of the individuals who are intended to benefit from the settings, in other words those consumers who are deaf and hard of hearing, would not actually be able to access them. As in the *Order on Reconsideration,* we clarify that covered entities are not prohibited from using voice controls to provide access to the area of the settings that contains the closed captioning display settings as long as there is an alternative way that is reasonably comparable to a button, key, or icon for individuals who are deaf and hard of hearing to readily access closed captioning display features. In addition, CTA indicated that at least one device manufacturer was considering a long press of a button on the remote to bring up closed captioning display settings. Compliance with the factors we adopt today is a fact-specific determination, and as a result, we decline to rule definitively on whether any particular means of providing closed captioning display settings is ''readily accessible.'' We agree with CTA that the long press of a remote control button may be consistent with the proximity requirement, which requires a mechanism reasonably comparable to a dedicated button, key, or icon, but we emphasize that the long press, like any mechanism, also would need to be evaluated to determine compliance with each of the other factors to be considered readily accessible.

Discoverability. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are ''discoverable.'' For this purpose, to ensure that the settings are ''discoverable,'' covered entities 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. This approach is consistent with the March 2024 joint proposal between NCTA and Consumer Groups. We note that as proposed in some comments, discoverability would have considered whether it is simple and intuitive for a viewer to find closed captioning display settings. Some commenters objected to that formulation as too subjective. The formulation in the March 2024 joint proposal that we adopt here has the benefit of being more objective because it requires entities to conduct usability testing, demonstrate efforts to address problems that arise during such testing, and train customer-facing employees. In addition, this approach is not superfluous of any other existing or new requirement.[31] We believe that discoverability, the ability to find the settings, is central to users' ability to benefit from and receive the value of closed captioning and is therefore in the public interest and is hereby required by our rules. We decline to specify the type of employee training that must be provided, instead concluding that regulated entities should retain flexibility to determine the type of employee training needed in their particular circumstances to ensure that settings are discoverable.

Previewability. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are ''previewable.'' For this purpose, ''previewability'' means whether viewers are able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings. As explained in the March 2024 joint proposal between NCTA and Consumer Groups, previewed captions must appear ''via a caption box overlaying the programming,'' such that [c]ustomers will still be able to see the underlying programming. . . .'' The caption preview may include ''stock text or caption previews, rather than the captions carried on the specific program,'' which ''will enable customers to preview captions even in situations where the channel the customer is watching may not include captions at a particular time, *e.g.,* during a commercial break or portions of programming that are uncaptioned due to the nature of the content.'' Although the Commission's rules already require apparatus to enable ''the user to preview default and user selection of the caption features required by this section,'' [32] that provision does not require the preview function to be accessible without exiting the programming. We find that requiring previewability to the extent described herein is in the public interest because it will enable a viewer to see how particular caption display settings work with the program the viewer is watching, and it is hereby required by our rules.[33] A previewability requirement as defined herein will make it efficient for consumers to adjust captions, while giving designers flexibility as to precisely how they modify their interfaces to facilitate previewability.

Consistency and Persistence. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are ''consistent and persistent.'' In keeping with the March 2024 joint proposal, for this purpose,

[31] We note that manufacturers and MVPDs are already required to provide information to consumers about how to access and use accessibility features on devices. *See* 47 CFR 79.107(a)(5) and (d)–(e), 79.108(d) and (f). The new employee training requirement will provide further consumer benefits.

[32] 47 CFR 79.103(c)(10).

[33] We believe this requirement is consistent with CTA's position that when consumers view video programming on smaller screens they may need to scroll to permit full visibility of all display settings.

''consistency and persistence'' means: (1) MVPDs that provide navigation devices 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,'' [34] the API must ''enable the app provider to use the device-level caption settings for its own content, if it chooses,'' and ''covered entities must notify application developers about this API or similar method through any reasonable means;'' (2) MVPDs that provide their own video programming app hosted on third-party devices ''will [utilize] the operating system-level closed caption settings of the [apparatus] upon launch of the app on the device;'' and (3) manufacturers must ensure that such apparatus ''make[ ] those settings available to applications via an API or similar method.'' [35] Consumer Groups have explained the difficulties of using different settings for each application on the same platform, and of maintaining the same settings across different platforms. As Consumer Groups explain, a consistency and persistence requirement will subject consumers to ''fewer procedures to customize captions for the same service used on different devices and for different services accessed on the same device,'' which will reduce the frequency with which consumers must adjust captions.

The approach to consistency and persistence that we adopt today is narrower than the approach previously advocated by the Consumer Groups, which would have required covered entities to ensure that their closed captioning display settings are consistent when the same service is used on different devices and persistent when different services are used on the same device. Industry raised several significant concerns with this broader definition of the ''consistency and persistence'' factor. We believe that the narrower approach to consistency and persistence that we adopt today, which includes specific requirements that are tailored to the role of each party, will help make display settings more readily accessible to users and therefore is in the public interest.

We recognize that any consistency and persistence requirement could raise certain issues, including how caption display settings should be stored and transmitted, how to address privacy and competitive implications that may arise, and whether to prioritize a preset setting versus a conflicting setting that a user subsequently inputs or a setting input on a device versus a conflicting setting input on an application accessed via the device. However, we do not believe these implementation issues are impediments to the development of solutions that satisfy the consistency and persistence requirement as defined here and we agree with NCTA that these issues ''should not stop the Commission from taking positive steps now to benefit consumers.'' With respect to CTA's objection that the requirement could compel disclosure of sensitive personal information in violation of state or federal privacy laws, we find that such objections are vague and unsubstantiated and we disagree that the requirements adopted here to provide consumers with consistent settings when different services are used on the same device would have such a result.[36] Similarly, while CTA explains that a television has no way to know if the person using it is the most recent user or a guest, the API-based approach set forth in the joint proposal still will improve the consumer experience and we do not believe that advancements in accessibility should be stalled because video equipment may be accessed by multiple viewers. To the extent compliance concerns remain even with the narrower approach we adopt today, we note that ''achievability'' and ''technical feasibility'' exemptions remain available to covered entities, as discussed further below.

Public Interest Benefits of New Display Settings Requirement. We find that the public interest benefits outweigh the costs for a requirement that the closed captioning display settings be readily accessible. In enacting the TDCA, Congress stated that ''to the fullest extent made possible by technology,'' persons who are deaf and hard of hearing ''should have equal access to the television medium.'' In the *Second FNPRM,* the Commission stated that there are important public interest considerations that weigh in favor of ensuring that consumers are able to readily access user display settings for closed captioning. The record supports the continued need for this access, providing numerous examples of user interfaces across various popular platforms, services, and devices that are apparently not readily accessible.[37] When it adopted technical standards for the display of closed captions on digital television receivers, the Commission concluded that ''[o]nly by requiring decoders to respond to these various [display] features can we ensure that closed captioning will be accessible for the greatest number of persons who are deaf and hard of hearing, and thereby achieve Congress' vision.'' According to Consumer Groups, the ability to alter font, size, color, and other display features of captions is ''a critical component of accessing closed captioning'' for individuals who are deaf and hard of hearing, allowing them to change the appearance of captions to best meet their particular needs.

Although the rules the Commission adopted in 2000 were intended to provide consumers with the benefits of customizing the appearance of closed captions, these features are not readily accessible to many consumers who are deaf and hard of hearing. When consumers cannot readily access the closed captioning display settings, the benefits of our rule allowing the customization of closed caption display are greatly diminished. Consumer Groups explained in 2016 that ''many consumers face the intimidating and frustrating technical barrier of display settings that are difficult to locate and utilize, which prevents viewers from being able to easily customize the captions to be readable.'' There is little evidence in the record of significant progress since the Commission proposed caption display settings requirements in 2015. Having to take cumbersome steps to access display settings that make closed captions readable may discourage individuals who are deaf and hard of hearing from using closed captioning to make video programming accessible. If consumers

[34] An API is an application programming interface. We understand that some devices or applications covered by our rules may use other tools comparable to APIs, such as application programming kits (APKs) or software development kits (SDKs). All references herein to APIs shall be read to include any such comparable development tools that allow one device or application to coordinate with another.

[35] NCTA/Consumer Groups Mar. 14, 2024 Ex Parte at 2; Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 3 (July 12, 2024) (NCTA July 12, 2024 Ex Parte). Consistent with CTA's ex parte filing, we clarify that compliance with (1) and (2) above focuses on MVPDs as entities that provide customers with access to video programing through navigation devices or the MVPD's own apps that customers access on third party devices. Compliance with (3) above reflects similar requirements for manufacturers as entities that manufacture apparatus. Consistent with NCTA's ex parte filing, language in (1) above fortifies a requirement from the joint proposal. One example of a ''reasonable means'' for the required notice would be ''a developer portal the developer must use to get its app onto the device.'' NCTA July 12, 2024 Ex Parte at 3.

[36] CTA's comments do not cite any specific state or federal privacy statute or case law that would be implicated by the rule we adopt or describe how the requirement could potentially violate such requirements.

[37] While the record also contains examples of some accessible user interfaces, that does not change the fact that many user interfaces are not readily accessible.

are unable to read default captions (*e.g.,* if the size of the font is too small) and are unable to locate and use display settings to change the appearance of the captions, they are precluded from using closed captioning at all.

As explained above, our action ensures that the Commission can meet its continuing obligation under the TDCA to take appropriate action to ensure that closed captioning remains available to consumers as new video technology is developed. As Consumer Groups explain, making closed captioning display settings easy to find and use is especially important given the multitude of devices and programming options available to consumers today, which may each require customization to suit a user's needs.[38] We agree with Consumer Groups that ''the[ ] goals of removing technical barriers and ensuring practical accessibility and readability of captions would all be advanced by the proposed rule.'' The benefits of the rule will extend not only to the deaf and hard of hearing population, but also to other members of the public that utilize closed captioning, including in public places such as restaurants, bars, hotels, hospitals, and nursing homes.

While the record reflects that there will be some costs to industry to comply with the rule we adopt herein, we find that the substantial benefits to consumers outweigh those costs. In the *Second FNPRM,* we inquired about the costs of the proposal as well as the impact of the proposed rule on small entities. The record does not contain any specific figures or estimates quantifying the costs of compliance. However, industry commenters indicate that modifying access to closed captioning display settings may be ''a significant undertaking involving design, development, testing, and manufacture [and] involving coordination among 'multiple internal and external design and engineering teams.' '' [39] These commenters assert that the efforts will involve more than a small software modification, but they do not allege that these efforts would be prohibitively burdensome or costly. Other industry commenters state that ''[a]dopting a new requirement regarding closed caption display settings . . . would chill innovation.'' [40] However, we find that the flexibility allowed in determining how to comply will mitigate this possibility. Taking into account the industry comments, we find that the extensive benefits outlined above will outweigh the compliance costs to industry. The benefits extend to the approximately 48 million Americans who are deaf and hard of hearing, as well as to the DeafBlind community and the millions of individuals with low vision, including many senior citizens.[41] As Consumer Groups state, ''The ability to adjust captioning settings is particularly essential for people who have both hearing and vision disabilities. For example, people who are DeafBlind, low vision or color blind often rely on high-contrast visuals and interfaces to be able to read information on screens. By ensuring that these individuals can easily find and adjust the caption display settings, the rules we now adopt will provide the autonomy needed for these individuals to independently customize captions on their own—*i.e.,* to select the color, size, and contrast that best fits their personalized needs for optimal readability and comprehension of content. Enhancing access to video programming in this manner will ensure that such individuals can fully benefit from the news, information and entertainment that video programming makes available to the rest of the general public.'' We also believe that the costs of compliance will be mitigated because we give covered entities flexibility in the manner of compliance, which allows them to choose a cost-effective solution, and because the requirements do not apply to third-party, pre-installed applications. Further, to the extent there are companies that already provide closed captioning display settings in a readily accessible manner, they will not need to incur any additional costs to comply.

In the initial comment period, industry commenters asserted that the Commission should take a ''wait-and-see approach'' to determine if additional accessibility rules are necessary. In particular, industry commenters asserted that manufacturers had been working hard to comply with the accessible user interfaces requirements adopted pursuant to sections 204 and 205 of the CVAA, which were subject to a December 20, 2016 compliance deadline, and that it was premature for the Commission to adopt new rules before evaluating the technical innovations developed by covered entities to meet these accessibility obligations. However, while the accessible user interfaces rules require that closed captioning be activated by a mechanism reasonably comparable to a button, key, or icon on digital apparatus and navigation devices, these requirements do not govern how closed captioning display settings should be accessed on such devices. Further, the record at that time contained few specific examples of how closed captioning display settings actually would be made available to consumers after the December deadline. While the accessible user interface rules and the 2016 compliance deadline were not intended to address access to closed captioning display settings, the Commission now has the benefit of a refreshed record that reflects a lack of progress since the 2016 deadline, and a basis to find that the closed captioning display setting requirements the Commission initially proposed remain necessary. Thus, we do not believe that the section 204 and 205 accessibility requirements obviate the need for Commission action with respect to closed captioning display settings, and we see no reason to further delay rules that are sorely needed by consumers who are deaf and hard of hearing to address the ''long and frustrating history'' of inaccessible display settings.[42]

Covered Devices. As proposed in the *Second FNPRM,* the rule we adopt herein applies to the devices covered by section 303(u) of the Act—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, as interpreted consistently with our precedent in the *IP Closed Captioning Order,* except that,

[38] We thus disagree with ACA Connects' contention that the Commission has failed to identify ''how the continued availability of closed captioning service would be frustrated in the absence of consumers' ability to readily access closed captioning display settings.'' Rather, we agree with Consumer Groups that consumers must be able to readily access closed captioning display settings to ensure that those captions are readable.

[39] CTA 2016 Reply at 7 (quoting Telecommunications Industry Association (TIA) 2016 Comments at 2.

[40] CTA 2022 Comments at 1; CTA 2023 Comments at 8 (''Locking in user interfaces to conform to the Advocacy Groups' proposal can slow future innovation and degrade the experience of individuals seeking to adjust more than just closed captioning display settings.'').

[41] Individuals who are low vision and also rely on closed captions may need to modify caption settings to make the captions readable.

[42] *See* Consumer Groups 2013 Comments at 8. *See also* Consumer Groups 2016 Reply at 4 (''These unsupported assurances stand in stark contrast to the experiences of Consumer Groups, which indicate that closed captioning settings remain difficult to access and, in many instances, are becoming less accessible.'') (footnote omitted). We thus reject the argument of CTA that rather than adopt new requirements, the Commission ''should encourage industry to continue to respond to user experiences, research and feedback to offer improved user interfaces that benefit all consumers, including those with disabilities.'' CTA 2023 Comments at 11–12.

consistent with the joint proposal, the readily accessible requirements do not apply to third-party, pre-installed applications.[43] Further, consistent with our precedent, the following are not subject to the requirements adopted herein: (1) apparatus exempt from the requirement to be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming (*e.g.,* display-only video monitors, and professional or commercial equipment); (2) equipment for which the requirement has been determined to be not achievable or technically feasible; or (3) equipment for which the requirement has been waived (*e.g.,* apparatus primarily designed for purposes other than receiving or playing back video programming). In CVAA orders subsequent to the *IP Closed Captioning Order,* the Commission consistently interpreted the term apparatus to include only applications that are pre-installed by the device manufacturer or that the manufacturer requires the consumer to install after sale. However, the Commission stated that it ''will continue to monitor the development of accessible technology in this area and will reevaluate whether we should require the accessibility of consumer-installed MVPD applications at a later date if it appears necessary to ensure access to MVPD programming'' by persons with disabilities. Although at that time the Commission observed that there are technical challenges in ensuring that consumer-installed MVPD applications comply with accessible user interface requirements, we recognize that the industry is constantly evolving. Similarly, for purposes of the readily accessible requirement, we credit the decision of the joint proposal to exclude both consumer-installed applications and third-party, pre-installed applications.[44] The exclusion of third-party, pre-installed applications is reasonable in this instance because inclusion would ''pose substantially more practical and technical difficulties'' [45] due to the types of requirements that are at issue herein—for instance customer service training and usability testing—and the independence of app developers on the one hand and MVPDs and manufacturers on the other. However, we intend to continue to monitor the constantly evolving video programming industry to ensure that people with disabilities are not left behind. Accordingly, if we find that MVPDs and/or manufacturers are not making their applications accessible, or if third-party, pre-installed applications, or new technologies, present accessibility challenges because display settings are not readily accessible, the Commission will consider initiating a rulemaking to determine whether we should impose additional readily accessible requirements.[46]

Consumer Groups agree that the rule should be applied broadly to the full range of devices covered by section 303(u) of the Act, which would ''promote Congress's goal of ensuring that closed captioning is available to consumers.'' AT&T and CTA, on the other hand, argue that the Commission's authority with respect to the TDCA is limited to the accessibility of broadcast television receivers. Contrary to the contention of these industry commenters, the Commission has authority under sections 303(u) and 330(b) of the Act to apply its new rules for consumer access to closed captioning display settings to apparatus beyond broadcast televisions. Although Congress's focus at the time of enactment of the TDCA was on broadcast television-related technical standards, that does not preclude a broader interpretation today. Section 303(u)(1), by its terms, applies broadly to all ''apparatus designed to receive or play back video programming transmitted simultaneously with sound.'' Although this phrase is not defined in the statute, Congress had amended the original language in 303(u), which had referred to ''apparatus designed to receive television pictures broadcast simultaneously with sound.'' The Commission has interpreted section 303(u)(1)'s scope broadly. The Commission's interpretation of section 303(u) as extending beyond broadcast televisions thus reflects the ordinary meaning of the statute. Because section 330(b), in pertinent part, simply refers to the ''apparatus described in section 303(u),'' our analysis of the scope of section 330(b) mirrors our interpretation of the scope of section 303(u).

Covered Entities. Both manufacturers of covered apparatus and MVPDs are responsible for compliance with the rule we adopt herein. The Commission sought comment in the *Second FNPRM* on whether both manufacturers and MVPDs should be obligated to make it easier for consumers to locate and control closed captioning display settings. Consumer Groups argue that manufacturers and MVPDs should share responsibility in ensuring that consumers can locate and use display settings, particularly because MVPDs have ongoing relationships with subscribers who are likely to turn to them to resolve any issues with accessibility features. We are persuaded by Consumer Groups that there are significant benefits of imposing these requirements on MVPDs as well as manufacturers, including that a consumer who is viewing video programming via an MVPD service would be more likely to contact the MVPD for assistance with user display settings. Industry commenters argue that the TDCA cannot be applied to MVPDs because the Commission's prior rulemakings implementing the TDCA imposed requirements only on manufacturers. We disagree. Whereas the initial order in this proceeding applied certain rules to navigation devices, which were the responsibility of MVPDs, and certain rules to apparatus, which were the responsibility of manufacturers, the overall result was that both manufacturers and MVPDs were subject to the requirements. Similarly in this Order, we hold MVPDs responsible for the apparatus they distribute to consumers, and manufacturers responsible for the apparatus they manufacture.

While the joint proposal submitted in March 2024 was focused on the cable context, it indicated that ''the proposals could also serve as a model for other MVPDs and equipment manufacturers.'' We believe that it is appropriate and reasonable to adopt the joint proposal to apply to all covered entities. The Media Bureau specifically sought comment on whether the joint proposal should ''apply broadly to the devices covered by section 303(u) of the Communications Act of 1934, as amended, and to both manufacturers of covered apparatus and MVPDs.'' In response, CTA argued that the Commission ''should not hold manufacturers responsible for aspects of the complex video ecosystem that they do not control and over which they do

[43] We note that section 303(u) imposes requirements on apparatus ''if technically feasible.''

[44] We note that the Consumer Groups request that in light of NCTA's clarification of the joint proposal with respect to the exclusion of third-party, pre-installed applications for MVPDs that the Commission consider whether the same concerns exist for device manufacturers. NCTA clarifies that this joint proposal exclusion is contemplated for both MVPDs and manufacturers and CTA notes the importance to consumers ''of a consistent experience across covered entities with respect to pre-installed applications.'' We agree and include the exclusion for all covered entities.

[45] Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 1 (July 10, 2024).

[46] In the absence of such a rulemaking, we do not at this time require MVPDs or manufacturers to provide software updates that they would not otherwise provide.

not have sufficient leverage to require compliance with regulatory obligations.'' We agree, and we note that the rules we adopt today hold manufacturers responsible for apparatus they manufacture and MVPDs responsible for apparatus they provide to their customers. We agree with Consumer Groups that ''just because responsibilities need to be coordinated among various video programming participants is no reason for these responsibilities not to be mandated and fulfilled.'' [47]

We agree with Consumer Groups that we have the authority to apply the rules we adopt today to MVPDs, as well as manufacturers. Sections 303(u) and 330(b) of the Act operate in tandem. Under section 303(u), the Commission establishes requirements for covered apparatus to be equipped with closed captioning, audio description, and emergency information capability. The first sentence of section 330(b) of the Act, in turn, states that ''[n]o person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States'' any apparatus that fails to satisfy the requirements adopted pursuant to section 303(u) of the Act. In other words, the duty to meet the apparatus requirements adopted under section 303(u) applies to any person engaging in the activities identified in section 330(b). MVPDs regularly ''ship in interstate commerce'' or ''import . . . into the United States'' the set-top boxes that they distribute to customers. In this respect, the requirements adopted under section 303(u)(1)(A) relating to closed captioning capability flow through to MVPDs by restricting the devices they can ship or import for distribution to their customers. We therefore conclude that, pursuant to the express terms of section 330(b), which states that ''no person shall'' engage in the specified activities, we will apply our new rule implementing sections 303(u) and 330(b) of the Act to MVPDs for the purpose of proscribing the actions enumerated in the first sentence of section 330(b).[48]

Although the statute defines the term ''interstate commerce,'' it does not separately define the phrase ''ship in interstate commerce,'' or provide express guidance on how that phrase should be applied to specific types of shipments. We therefore interpret this phrase in a way that best reflects the ordinary meaning of the text and meets the statutory objectives of section 330(b) and section 303(u). We believe it is best to interpret the phrase to apply to the entire transportation path from the point at which the goods leave the seller's warehouse to the point at which the buyer, such as an MVPD, delivers the goods to its own customers—in this context an MVPD's subscribers. Thus, we conclude that the term ''interstate commerce'' encompasses ''commerce'' in apparatus deployed by MVPDs to their subscribers, and we interpret the phrase ''no person shall ship in interstate commerce'' to proscribe an MVPD's deployment of noncompliant set-top boxes or other covered apparatus to subscribers' premises after the applicable compliance deadline, where covered apparatus originated from out of state or traversed state lines.

Our conclusion is supported by cases in which the phrase ''in interstate commerce'' has been interpreted to refer to the entire stream or flow of commerce with respect to a product. Those cases hold that the flow of interstate commerce does not end once an intrastate shipment begins where a seller transporting goods intrastate ''made interstate sales or was 'otherwise directly involved in national markets' or . . . the 'local market . . . is an integral part of the interstate market in other component commodities or products.' '' [49]

In the circumstances at issue here, MVPDs are an active link in the continuous flow of equipment to their subscribers. They typically order equipment from manufacturers that is shipped interstate for deployment to their subscribers. Thus, an MVPD is the pivotal intermediary between the apparatus manufacturer and the MVPD's subscribers, essentially making choices on behalf of its subscribers. This is materially different from situations in which a manufacturer sells to a wholesaler, the wholesaler sells to multiple retailers, and consumers shop at retailers and decide what to buy. Under these circumstances, we find that MVPDs engage in interstate commerce when they procure equipment across state lines and deploy it to subscribers to enable them to view their programming.

This conclusion is reinforced by the statutory context. The statute is intended to protect consumers with disabilities by ensuring that equipment that the MVPD selects on their behalf serves their needs. In this context, it makes sense to view all of the links in the chain as a continuous stream of commerce ultimately destined for the MVPD subscriber.[50] And given the MVPD's intermediary role, interpreting the phrase ''ship in interstate commerce'' to apply to the MVPD's deployment of apparatus to subscribers' premises best reflects the ordinary meaning of the statutory text and best serves the statutory purpose of ensuring that all consumers who are deaf and hard of hearing should have equal access to television programming. In light of this statutory purpose, and against the backdrop of judicial precedent interpreting the phrase ''in interstate commerce,'' we conclude that an MVPD that procures covered apparatus from a manufacturer located in another state or foreign country and deploys it to subscribers is shipping apparatus in interstate commerce.[51] Accordingly, we interpret the phrase ''no person shall ship in interstate commerce'' as prohibiting MVPDs from deploying non-compliant apparatus to subscribers after the applicable compliance deadline. Further, from a

[47] Consumer Groups state further that the Commission previously apportioned responsibilities among some of the same entities when it adopted the IP closed captioning requirements in 2012, and the television closed captioning quality requirements in 2016.

[48] This approach is consistent with our existing apparatus rules governing the accessibility of video programming, which apply to MVPDs to the extent that they engage in the enumerated activities.

[49] *Gulf Oil Corp.* v. *Copp Paving Co.,* 419 U.S. 186, 195–96 (1974) (cited in *Able Sales* v. *CAPR,* 406 F.3d56, 64 (1st Cir. 2005)). We recognize that specific outcomes under a flow of commerce analysis can vary somewhat in different decisions and in different contexts. In interpreting section 330 of the Act, we need not, and do not, seek to replicate the specific approach taken in any of those other regulatory contexts, but draw upon principles from that precedent that are useful, including in carrying out the goals and purposes of the Act.

[50] The legislative history does not discuss the definition of ''interstate commerce.'' It appears that congressional deliberations were informed by the 1960 legal opinion of the FCC's then-General Counsel, John L. Fitzgerald, which observed: ''The congressional power under the commerce clause is not confined simply to the regulation of commerce among the states but extends to those activities intrastate which so affect interstate commerce as to make regulation of them proper means to the attainment of a legitimate end.'' *See* All Channel Television Receivers and Demixture, Hearings Before the Committee on Interstate and Foreign Commerce, House of Representatives, on HR. 8031 et al. at 124–25, 128 (Mar. 5, 6, 7, and 9, 1962) (including the 1960 Legal Opinion of FCC General Counsel John L. Fitzgerald for the record). *See also* H. Rep. No. 87–1559 at 6 (Apr. 9, 1962) (discussing the constitutionality of the All Channel Television Receivers Act and noting opinions provided by the FCC's General Counsel and the Department of Justice); S. Rep. No. 87–1526 at 5 (May 24, 1962) (same).

[51] The MVPD is shipping apparatus ''within the flow of interstate commerce—the practical, economic continuity in the generation of goods and services for interstate markets and their transport and distribution to the consumer.'' *Gulf Oil Corp.,* 419 U.S. at 195. *See also* FCC General Counsel Opinion at 128 (''The congressional power under the commerce clause is not confined simply to the regulation of commerce among the states but extends to those activities intrastate which so affect interstate commerce as to make regulation of them proper means to the attainment of a legitimate end.'').

policy perspective, we agree with Consumer Groups that MVPDs play an integral role in ensuring that closed captioning service is available because, unlike manufacturers, they have an ongoing relationship with consumers. In addition, to the extent any MVPD manufactures covered apparatus, we note that section 330(b) applies to such MVPDs for that reason alone. For all of these reasons, the statutory language and policy objectives both support application of the rule to MVPDs.

Waivers and Exemptions. Achievability. Because we derive our authority for the rule we adopt herein from section 303(u)(1) of the Act, we find that the requirement for readily accessible caption display settings for covered apparatus that use a picture screen less than 13 inches in size is subject to the achievability provision set forth in section 303(u)(2)(A). Section 303(u)(2)(A) of the Act, as amended by section 203 of the CVAA, specifies that apparatus described in section 303(u)(1) that use a picture screen that is less than 13 inches in size must meet the requirements of that section only if such requirements ''are achievable (as defined in section 617 of this title).'' In the *Second FNPRM,* the Commission sought comment on whether the provisions related to achievability in section 303(u) of the Act apply to the requirement that consumers be able to readily access user display settings for closed captioning. Industry commenters argued that we should allow covered entities to seek an exemption on the grounds of achievability, while Consumer Groups argued that it is unnecessary to adopt an achievability exemption because compliance with the rule will involve only a minor software modification. We find that covered apparatus that use a picture screen less than 13 inches in size must meet the requirements of section 303(u)(1), which requires covered apparatus to be equipped with built-in closed caption decoder circuitry or capability designed to display closed captioned video programming, only if such requirements ''are achievable.''

The Act defines ''achievable'' to mean ''with reasonable effort or expense,'' as determined by the Commission. The Commission will determine whether compliance is ''achievable'' on a case-by-case basis, consistent with the approach taken by the Commission when implementing section 203 of the CVAA.[52] In particular, the Commission will consider the following factors in determining whether compliance with the requirements adopted herein is achievable in particular circumstances: (1) the nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or provider; and (4) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. If a covered entity believes that it is not achievable for it to comply with the rule we adopt herein, it may either (i) seek a determination from the Commission that compliance with the rule is not achievable before manufacturing or importing the apparatus; or (ii) raise as a defense to a complaint or Commission enforcement action that a particular apparatus does not comply with the rules because compliance was not achievable.[53] If a party seeks a determination of achievability before manufacturing or importing the apparatus, it should follow the procedures for an informal request for Commission action pursuant to § 1.41 of our rules.

Technical feasibility. In the *Second FNPRM,* we also sought comment on whether the technical feasibility exemption in section 303(u) of the Act applies to the requirement that consumers be able to readily access user display settings for closed captioning. As discussed above, we find that it does. In particular, the requirements set forth in section 303(u) of the Act, including the requirement that covered apparatus be equipped with built-in closed caption decoder circuitry or capability designed to display closed captioned video programming, apply only ''if technically feasible.'' According to industry commenters, the Commission should permit covered entities to seek an exemption based on technical infeasibility. Consumer Groups, on the other hand, contend that the Commission should not adopt a technical feasibility exemption because compliance can be achieved through a simple technical modification, making such an exemption unnecessary. However, section 303(u) clearly specifies that compliance is required only ''if technically feasible.''

We interpret the term ''technically feasible'' consistent with Commission precedent. Notably, to demonstrate that compliance is technically infeasible, covered entities must show that changes to the design of the apparatus to make closed captioning display settings readily accessible are not physically or technically possible, and not just that they are ''merely difficult.'' We permit parties to raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or to file a request for a ruling under § 1.41 of the Commission's rules as to technical infeasibility before manufacturing or importing the product.

Legacy navigation devices. We decline to adopt a blanket exemption for ''legacy navigation devices that are provided by small and medium-sized MVPDs,'' as ACA Connects advocates.[54] To the extent ACA Connects is concerned about devices that were manufactured prior to the compliance deadline, any such concern should be alleviated by our decision not to apply the requirements to such apparatus. It appears that ACA Connects' concern applies to such previously manufactured devices, but to the extent the concern extends to some other category of devices, we reiterate that the waiver and exemption processes adopted herein are available to MVPDs on a case-by-case basis. Because the record does not indicate that an MVPD would need to avail itself of an exemption or extension for every ''legacy navigation device,'' we find that the availability of case-by-case waivers or exemptions is a preferable solution to an overbroad blanket exemption.

Streamlined process for small and medium-sized providers. ACA Connects asks the Commission to adopt a streamlined waiver process for small and medium-sized providers, enabling them to obtain a waiver without the use of any external resources. We find that the existing waiver and exemption processes are sufficiently flexible to be workable for small and mid-sized providers. Providers have the flexibility to raise achievability and technical feasibility either prior to manufacture or

[52] The Commission will rely on the existing provision in § 79.103(b)(3) of its rules.

[53] To provide one example, CTA expresses concern ''that on small or less sophisticated devices, overlaying the captioning menu over currently playing video may be challenging to implement on some combinations of hardware and operating systems.'' To the extent a manufacturer has this concern about a particular device, it may seek to avail itself of the achievability provision.

[54] ACA Connects defines ''legacy navigation device(s)'' as ''any set-top box or navigation device that MVPDs sell or lease to their subscribers that provides access to the MVPDs' 'closed systems' by decrypting MVPD video programming streams for display on television receivers.''

in response to a complaint. Adopting a different process here for small and medium-sized providers would be inconsistent with prior orders adopting the same achievability and technical feasibility provisions. ACA Connects has failed to justify why the same process that has been used in prior proceedings implementing the same provisions should be modified here.

Compliance Deadline. We adopt a compliance deadline after the Office of Management and Budget completes its review of any new or modified information collection requirements under the Paperwork Reduction Act or two years after publication of the *Third Report and Order* in the **Federal Register**, whichever is later. In the *Second FNPRM,* we inquired about the appropriate time frame for requiring covered entities to ensure that consumers are able to readily access user display settings for closed captioning.[55] According to Consumer Groups, ''[i]ncluding user display settings in the first level of a menu would require only a small software modification and would not require any hardware design changes,'' and thus, an extended period to come into compliance is unnecessary. CTA disputes this contention, arguing that Consumer Groups ''fail[ ] to acknowledge the complexity of implementing rules regarding closed captioning display settings.'' [56] NCTA, TIA, AT&T, and EchoStar request at least two years to comply, while CTA and ACA Connects assert that three years is a reasonable implementation period. Consumer Groups initially sought a one year compliance deadline, but in the comment cycle following the March 2024 joint proposal they requested two years.

Based on our review of the record, we adopt the compliance deadline included in the joint proposal as clarified in ex parte presentations. Specifically, compliance is required for devices that use next generation operating systems deployed more than two years after publication of the *Third Report and Order* in the **Federal Register**. We find the compliance deadline is reasonable, though we encourage covered manufacturers and MVPDs to offer readily accessible closed captioning display settings as soon as it is technically feasible for them to do so. Consistent with the initial order in this proceeding, the requirements adopted herein will not apply to devices manufactured prior to the deadline.[57] MVPDs should, however, ''provide new equipment upon request to any customer who is deaf or hard of hearing,'' as stated in the March 2024 joint proposal. MVPDs should provide notice to customers who are deaf or hard of hearing when new operating systems are deployed. Based on the record, it appears that the requirement to make closed captioning display settings readily accessible may involve more than a ''small software modification.'' Even software changes may involve a more substantial design and development process than a simple update.

When the Commission adopted a rule requiring manufacturers of apparatus subject to § 79.105 of the Commission's rules to provide a mechanism that is simple and easy to use for activating the secondary audio stream for audible emergency information, it gave covered entities approximately 17 months to comply. In that proceeding, we similarly acknowledged that covered entities ''will need some time for the design, testing, and implementation of a simple and easy to use activation mechanism for the secondary audio stream on covered apparatus,'' and concluded that the time granted was sufficient to achieve these steps. In practice, the deadline proved sufficient, with no waiver requests filed pertaining to the requirement contained in § 79.105. Likewise, we believe that a 24-month period will provide covered entities with sufficient time to achieve the steps necessary to comply with the rule adopted herein.[58]

We decline to adopt a later compliance deadline for certain mid-sized and smaller MVPDs, as ACA Connects requests, because we find that such an approach is unnecessary and unworkable here. First, a longer deadline for smaller MVPDs is unnecessary because a compliance deadline based on the date of manufacture will ensure that MVPDs can utilize their existing inventory, and because MVPDs will not need to rely on their market power to compel manufacturers to comply since the rules explicitly apply to both entities. Second, a longer deadline for smaller MVPDs is unworkable because it would result in a situation in which provision of a given device that was manufactured after the deadline applicable to manufacturers, but before the deadline applicable to smaller MVPDs, would be a violation for the manufacturer but not the MVPD. We note additionally that an extended deadline for mid-sized and smaller MVPDs was justified when the Commission adopted multiple accessibility requirements in the initial *Report and Order,* whereas here we adopt a single requirement for accessible closed captioning display settings. To the extent particular MVPDs find that they are unable to comply with the requirements adopted herein, the waiver or exemption procedures discussed above are available to them.

Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Third Report and Order. In summary, the Third Report and Order requires closed captioning display settings to be ''readily accessible.'' The action is authorized pursuant to the Television Decoder Circuitry Act of 1990, Public Law 101–431, 104 Stat. 960, and the authority found in sections 4(i), 4(j), 303(r), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j),

[55] In particular, we sought comment on Consumer Groups' request that the compliance deadline coincide with the December 20, 2016 deadline for the requirement to provide an accessible closed captioning activation mechanism pursuant to sections 204 and 205 of the CVAA. Given the passage of time, Consumer Groups' proposal to use that deadline has become moot.

[56] Providing greater specificity, EchoStar explains that making display settings available in the top level of a menu would require EchoStar to rewrite software for each set-top box remote control based on its current design and would require EchoStar to rewrite both the factory code and production code for all types of set-top boxes that it manufactures. As EchoStar explains, ''[t]his factory code controls the default accessibility features for the set-top box which the consumer can customize as part of the installation process. Once the set-top box is connected to a properly aimed satellite dish, [a] production code specific to each set-top box model is downloaded and used in normal operation.''

[57] ACA maintains that any obligation placed on MVPDs should apply only ''to navigation devices purchased after a certain future date,'' and that our rule should not prohibit the use of existing inventory after the compliance deadline. By declining to apply the requirements to apparatus manufactured prior to the deadline, we will ensure that MVPDs are able to utilize their existing inventory.

[58] Some industry commenters ask for an extended compliance timeline, arguing that this would be consistent with the timeframe needed for product development and our prior implementation of CVAA accessibility rules. However, such longer timeframes were justified when the Commission adopted more extensive accessibility requirements than we are adopting in this Order. For example, we established a three-year compliance period in the initial *Report and Order* implementing sections 204 and 205 of the CVAA because there we adopted multiple requirements related to accessible program guides and menus and closed captioning and audio description activation mechanisms. Additionally, while CTA suggests that a minimum of five years would be needed to comply with a ''consistency and persistence'' requirement, we find that the narrow approach we adopt to the ''consistency and persistence'' requirement does not justify a longer timeframe. Industry commenters have failed to provide the details necessary to support a compliance timeline longer than two years here.

303(r), 303(u), 330(b). The types of small entities that may be affected by the action fall within the following categories: Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), Direct Broadcast Satellite (DBS) Service, Satellite Master Antenna Television (SMATV) Systems also known as Private Cable Operators (PCOs), Home Satellite Dish (HSD) Service, Open Video Systems, Broadband Radio Service and Educational Broadband Service, Incumbent Local Exchange Carriers (Incumbent LECs), Competitive Local Exchange Carriers (LECs), Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, and Audio and Video Equipment Manufacturing.

The projected reporting and recordkeeping requirements include that covered entities must notify application developers about the application programming interface (API) or similar method by which covered MVPDs providing navigation devices must expose closed captioning display settings. This notification can be accomplished by any reasonable means. More generally, in the event that an allegation of non-compliance arises against an entity, regardless of the size of the covered entity, it will need to demonstrate how it has complied with the applicable requirements. For example, if there is an allegation that a covered entity has not provided the required employee training, it could refute that allegation by reference to training materials or a training schedule. The *Third Report and Order* permits small and other covered entities to seek exemptions from the adopted requirements on the basis that compliance is not technically feasibility and/or not achievable, pursuant to section 303(u) of the Act and consistent with our precedent in the *IP Closed Captioning Order*.[59] To demonstrate that compliance is not achievable—cannot be accomplished with reasonable effort or expense—or is not ''technically feasible'' will require small and other entities to have records, and to make a filing with the Commission to substantiate such claims. Small and other entities will also have to keep and be able to produce records associated with their compliance in the event they are subject to a dispute or complaint about accessibility.

[59] Note that in accordance with the statute, achievability only applies to covered apparatus that use a picture screen less than 13 inches in size, whereas technical feasibility may apply to any covered apparatus.

The other compliance requirements that are applicable to covered small entities include the adoption of a rule that requires manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus. To determine whether particular settings are readily accessible, the Commission requires compliance with the following factors: proximity, discoverability, previewability, and consistency and persistence. The Commission does not otherwise dictate the precise manner of compliance as long as such settings are readily accessible. This approach will ensure that consumers who are deaf and hard of hearing can easily access closed captioning display settings, while still giving small and other covered entities flexibility in the manner of compliance and allowing companies to develop innovative solutions for accessibility.

The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments in response to the proposed rules in this proceeding.

To minimize the significant economic impact the rules adopted in the *Third Report and Order* may have on small entities, in the *Second FNPRM* the Commission inquired whether the provisions of section 303(u) of the Act that allow the Commission to tailor its rules, as necessary, to small entities for whom compliance with such rules is economically burdensome should apply. Consistent with our determination that Section 303(u) of the Act should apply, we considered and find that small entities are able to avoid potentially economically burdensome compliance with the requirements in the *Third Report and Order* to ensure that users can readily access closed captioning display settings if they are able to demonstrate to the Commission that such compliance is not ''achievable'' (*i.e.,* cannot be accomplished with reasonable effort or expense, with the provision limited by statute to apparatus that use a picture screen less than 13 inches in size) or is not ''technically feasible.'' Two of the four statutory factors that we must consider in assessing achievability are particularly relevant to small entities: (i) the nature and cost of the steps needed to meet the requirements, and (ii) the technical and economic impact on the entity's operations.

In general, we afford covered entities flexibility in how they make closed captioning display settings readily accessible to consumers, and will determine whether settings are readily accessible to consumers by evaluating the following factors: proximity, discoverability, previewability, and consistency and persistence. This approach will ensure that small and other covered entities can choose how to make closed captioning display settings available, as long as such settings are readily accessible to consumers, enabling these entities to decide what works best for them. Our approach will also allow the Commission to address the impact of the rules on individual entities on a case-by-case basis, and to modify application of our rules to accommodate individual circumstances thereby potentially reducing the costs of compliance for such entities. The Commission's adopted definition of the four required factors that we will evaluate to determine whether small and other entities have met their obligation to make display settings readily accessible to consumers is based on a March 2024 joint proposal filed in the record by NCTA and certain Consumer Groups. The meaning of the ''discoverability'' factor evolved from a previously proposed meaning, which industry objected to as being too subjective, to a meaning that focuses on consumer testing and employee training. This objective definition should make it easier and simpler for covered entities to ensure they are in compliance. Similarly, the meaning of the ''consistency and persistence'' factor evolved from a previously proposed broader definition, which industry objected to as raising several problems, to a meaning that focuses largely on the use of application programming interfaces (APIs) or comparable tools and the coordination between covered entities. This narrow approach should also make it easier and simpler for small and other covered entities to comply. Additionally, rather than requiring compliance for third-party, pre-installed applications, the Commission explicitly states that the readily accessible requirements do not apply to such applications, which is consistent with the March 2024 joint proposal and will further ease compliance burdens for all entities, including small entities.

In response to commenter ACA Connects, as discussed above, the Commission considered and rejected the request for a blanket compliance exemption for small and medium-sized providers of legacy navigation devices, a streamlined waiver process for such providers, and a later compliance deadline. Our decision is consistent with prior orders, and the record did not provide sufficient justification for the Commission to adopt any other

proposed alternatives. To the extent particular small entities find that they are unable to comply with the requirements adopted in the *Third Report and Order,* the waiver and exemption procedures are available to them.

Based on these considerations, the Commission believes that we have appropriately considered both the interests of individuals with disabilities and the interests of small and other entities who will be subject to the rules, consistent with Congress's intent that ''to the fullest extent made possible by technology,'' persons who are deaf and hard of hearing ''should have equal access to the television medium.''

Paperwork Reduction Act. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ordering Clauses. Accordingly, *it is ordered* that, pursuant to the Television Decoder Circuitry Act of 1990, Public Law 101–431, 104 Stat. 960, and the authority found in sections 4(i), 4(j), 303(r), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 330(b), this Third Report and Order *is adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

It is further ordered that, pursuant to the Television Decoder Circuitry Act of 1990, Public Law 101–431, 104 Stat. 960, and the authority found in sections 4(i), 4(j), 303(r), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 330(b), the Commission's rules *are hereby amended* as set forth in Appendix A, effective thirty (30) days after the date of publication in the **Federal Register**. Compliance with new § 79.103(e) of the Commission's rules, 47 CFR 79.103(e), which may contain new or modified information collection requirements, will not be required until the Office of Management and Budget has completed its review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act or two years after the date of publication in the **Federal Register**, whichever is later. The Commission directs the Media Bureau to announce the compliance date for § 79.103(e) by subsequent Public Notice and to revise § 79.103(e) accordingly.

It is further ordered that the Commission's Office of the Secretary *shall send* a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this *Third Report and Order* in MB Docket No. 12–108 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 79

Cable television, Communications equipment, Satellite communications, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 to read as follows:

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.103 by revising the section heading and adding paragraph (e) to read as follows:

§ 79.103 Closed caption decoder and display requirements for apparatus.

* * * * *

(e) *Access to closed captioning display settings.* Manufacturers of apparatus subject to paragraph (a) of this section and multichannel video programming distributors must ensure that consumers are able to readily access user display settings for closed captioning on 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, if technically feasible, except that the requirement does not apply to third-party, pre-installed applications, and for apparatus that use a picture screen of less than 13 inches in size the requirement is mandated only if doing so is achievable as defined in this section.

(1) In determining whether closed captioning display settings are readily accessible, the Commission will require compliance with the following factors:

(i) *Proximity.* This factor considers whether the closed captioning display settings are available in one area of the settings that is accessed via a means reasonably comparable to a button, key, or icon.

(ii) *Discoverability.* This factor considers whether the user has the ability to easily find the closed captioning display settings. To ensure settings are discoverable, manufacturers of apparatus subject to paragraph (a) of this section and multichannel video programming distributors are required to:

(A) 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;

(B) Make good faith efforts to correct problems identified during the consumer testing process; and

(C) Train customer-facing employees on how to advise customers with regard to caption display settings.

(iii) *Previewability.* This factor considers whether viewers are able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings.

(iv) *Consistency and persistence.* This factor requires covered entities to:

(A) With regard to an MVPD's provision of navigation devices, expose closed caption display settings via an application programming interface (API) or similar method that an over-the-top application provider can use upon launch of their application on the device. The API or similar method must enable the application provider to use the device-level caption settings for its own content, if it chooses, and covered entities must notify application developers about this API or similar method through any reasonable means;

(B) With regard to providing an MVPD's own video programming application hosted on third-party devices, utilize the operating system-level closed caption settings of the apparatus upon launch of the application on the device; and

(C) Ensure that apparatus they manufacture make closed caption settings available to applications via an API or similar method.

(2) Compliance with this requirement is required for devices that use next generation operating systems deployed after FCC publishes a rule in the **Federal Register** establishing the compliance date.

Note: The compliance date is after the Office of Management and Budget has completed its review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act or August 17, 2026, whichever is later.

(3) This paragraph (e) places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before August 17, 2026.

[FR Doc. 2024–17479 Filed 8–14–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, 223, 226, and 252

[Docket DARS–2024–0026]

RIN 0750–AM21

Defense Federal Acquisition Regulation Supplement: Sustainable Procurement (DFARS Case 2024–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to align the DFARS with changes made to the Federal Acquisition Regulation.

DATES: Effective August 15, 2024.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises the DFARS to align it with changes made to the Federal Acquisition Regulation (FAR). FAR Case 2022–006, published in the **Federal Register** on April 22, 2024, at 89 FR 30210, reorganized and updated FAR part 23. Changes included consolidation of content into particular subparts within part 23 and renaming part 23 along with some of its subparts. FAR Case 2022–006 also moved nonenvironmental matters, to include requirements for a drug-free workplace, from FAR part 23 to part 26.

To align the DFARS with the FAR, this final rule implements corresponding changes to the DFARS. This rule changes the title of DFARS part 223 to ''Environment, Sustainable Acquisition, and Material Safety'' and the title of subpart 223.3 to ''Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.'' This rule adds subpart 223.1, Sustainable Products and Services, and moves the content from subparts 223.4 and 223.8 to the newly added subpart 223.1. It moves the content of subpart 223.5, Drug-Free Workplace, to newly added subpart 226.5, Drug-Free Workplace. Consequently, this rule also relocates the contract clause at DFARS 252.223–7004, Drug-Free Work Force, to DFARS 252.226–7003, Drug-Free Work Force.

As a result of this reorganization, and to correspond to changes in the FAR, this rule renumbers or revises the headings of certain DFARS paragraphs. In addition, editorial changes are made in 252.226–7003, paragraph (a), to conform with drafting conventions for definitions.

None of the changes in this rule affect the DFARS substantively. This rule does not alter policy or requirements stated in the DFARS.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it only renames an existing DFARS part and existing subparts, and relocates DFARS subparts and paragraphs, to align the DFARS with changes made in the FAR. None of these changes to the DFARS are substantive.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. It merely relocates an existing clause from DFARS 252.223–7004, Drug-Free Work Force, to DFARS 252.226–7003, Drug-Free Work Force, without substantive change. The rule does not impact the applicability of any existing solicitation provisions or contract clauses to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.