

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**Reply Comments of
WTA – Advocates for Rural Broadband**

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WTA – Advocates for Rural Broadband (“WTA”)¹ hereby submits these comments in response to the Media Bureau’s Public Notice seeking comment on the status of marketplace for accessible set-top boxes for the visually impaired. The Public Notice seeks comment “on the accessibility solutions that have been designed and developed by larger Multichannel Video Programming Distributors (“MVPDs”) to meet their December 2016 compliance deadline” and “whether mid-sized and smaller MVPDs can implement such solutions” by their later December 20, 2018 deadline.² It also seeks comment on steps small MVPDs have taken to reach compliance with the rules and what accessibility solutions will look like – whether it is an “app based solution; software integration into existing set-top box; upgraded set-top box; third-party peripheral device; a combination; or other solution.”³

¹ *WTA -- Advocates for Rural Broadband* is a national trade association represents more than 340 rural telecommunications providers offering voice, broadband, and video-related services in rural America. Its members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

² Public Notice, Media Bureau Seeks Comment on December 20, 2018 Accessible User Interfaces Deadline for Mid- Sized and Smaller MVPDs, MB Docket No. 12-108, released Sept. 28, 2017, (“Public Notice”).

³ *Id.*

In the initial round of comments, the American Cable Association (“ACA”) reported on its research of the marketplace for accessibility solutions. It observed that large MVPDs have developed unique solutions to their own systems that cannot be passed on to small MVPDs. Despite that problem, ACA noted that there were other solutions for some MVPDs, though they may only be partial solutions.⁴

WTA files these reply comments to highlight important points from ACA’s comments – notably, the fact that large providers have developed their own accessibility solutions. WTA also emphasizes that the Commission needs to remain mindful of the extreme pressures that small MVPDs face in the marketplace and how the delivery of video programming will change as the marketplace evolves.

A. The Commission’s Underlying Assumption that Large MVPDs Would Set the Standards for Small MVPDs Has Not Proven True

In the Commission’s 2013 Report and Order, it gave additional time for MVPDs with fewer than 400,000 subscribers to come into the compliance with the video accessibility rules reasoning:

We recognize that smaller operators generally lack the market power and resources to drive independently the development of MVPD headend or customer premises equipment...it is the large cable operators that generally dictate equipment features to manufacturers and commonly get priority in the delivery of that equipment.”⁵

⁴ See Comments of American Cable Association, MB Docket No. 12-108, filed October 30, 2017, at 21, available at <http://www.americancable.org/fcc-comments-re-accessibility-of-user-interfaces-and-video-programming-guides-and-menus/>.

⁵ Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty- First Century Communications and Video Accessibility Act of 2010, MB Docket No. 12-108, released October 31, 2013, at ¶ 115, https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-156A1.pdf.

As ACA noted in its comments on the marketplace, the Commission predicted that large providers would set the standard for other smaller providers, such as WTA members, to follow. ACA notes that the Commission “expected the market for accessible navigation devices to develop in much the same manner as had previous cable technical deployments.”⁶ However, this prediction has not played out as expected, and large providers have not in fact coalesced around a single standard that smaller MVPDs can follow. Instead, large MVPDs have “developed their own advanced user interfaces or configured their network upgrades to run an advanced user interface developed by a third party.”⁷

Large MVPDs have spent significant sums of capital on improving their network as they transition to next generation technology. This has included updating their set-top boxes with “cloud-based program guides and a variety of advanced functions.”⁸ Customers of these large MVPDs have benefited from these advancements, including those with differing abilities. As ACA notes:

these larger operators’ massive investments in next generation navigation devices and user guides were not primarily driven by the need to meet the Commission’s talking guide requirements, but rather by a conclusion that they could get an adequate return on investment by providing all of their customers with a next generation video experience.⁹

ACA explains that these additions were not from pressure to comply with rules, but rather were included in generally in already scheduled network improvements.¹⁰

⁶ Comments of American Cable Association at 11.

⁷ Id. at 12.

⁸ Id. at 13.

⁹ Id.

¹⁰ Id.

It is important to note that all of these adoptions were “highly specific to the operators’ networks and services.”¹¹ None of these solutions are separable from the underlying new large MVPD architectures, and they cannot be used with older, legacy systems that small MVPDs currently use. As ACA points out:

To the extent that these technologies were even (or could be) made available for licensing by other operators, those operators would need to overhaul their systems, at significant expense, to ensure compatibility with the user interface and network architecture for which they were originally designed.

Therefore, the market for, and availability of, accessible set-top boxes for the visually impaired have not developed as the Commission assumed they would when it gave mid-sized and small MVPDs an additional two years to implement essentially the same solutions as the larger MVPDs. WTA members and vendors can attest that there has been no new industry standards, software, or hardware emanating from the large providers that will enable smaller MVPDs to comply with the subject accessibility rules by the end of 2018. Rather, as ACA notes, small providers will have to use alternative options that in most cases are either cost prohibitive or not fully compliant.

B. The Other Alternatives for Small MVPDs Are Either Cost Prohibitive or Not Fully Compliant

In its Initial Comments, ACA outlined alternative options that smaller MVPD could use to reach compliance. However, these options either come at great expense or will not allow smaller MVPDs to reach complete compliance. Considering that most WTA members and other small rural MVPDs are struggling to survive in the face of skyrocketing programming costs, they

¹¹ Id. at 14.

simply do not have the resources to make the type of investments employed by the larger companies to become fully compliant.

In its Comments, ACA proposed that the best solution for small MVPDs is the adoption of the TiVo “Quattro” platform on a wholesale basis. ACA states that the platform can “offer their customers all of their QAM-delivered video services, along with advanced features, such as a best-in-class accessible user interface and multiple-tuner DVRs,” and it would also give customers a talking guide solution.¹² However, even when negotiating through the National Cable Television Cooperative (“NCTC”) or through a direct deal with TiVo, the idea of purchasing and then implementing the TiVo platform across a small MVPDs’ network is a costly proposition - at least \$100,000 - making it prohibitively expensive for many small operators.¹³ In fact, one WTA member has indicated his company has considered switching their customers over to the TiVo platform on more than one occasion due to its advanced features and capabilities. However each time it was considered to be an inefficient use of the company’s limited funds.

ACA also correctly highlighted the fact that legacy analog systems do not, and likely will not, have an accessibility solution.¹⁴ WTA has several members that operate analog systems, and they have indicated they would not be able to comply with the rules because of the costs associated with coming into compliance.

WTA is also concerned that there are still potentially critical details that are not known about the low cost DTA navigation device that ACA mentioned in their comments.¹⁵ Whereas it

¹² Id. at 16.

¹³ Id. at 18.

¹⁴ Id. at 21.

¹⁵ Id. at 19.

appears it will contain a talking guide feature, WTA does not believe that it is clear at this time whether additional time will be needed for its deployment and adoption and, if so, the length of the estimated timelines. Also, although the DTA solution is claimed to be “affordable,” WTA is concerned that it may require a minimum order of boxes that prevents it from being used on an individual “per request” basis. WTA also emphasizes that the DTA and other CableCARD solutions would not permit two-way communications, making MVPD video-on-demand services inaccessible.¹⁶

It is important to note that each MVPD’s system is unique and comes with its own capabilities and challenges. What works for one, might not work for the other. As such, especially in consideration of the incorrect assumption that large providers would set new and affordable standards, small MVPDs may need additional flexibility in totally or partially complying with the rules. The only way to know for certain is by the MVPD working with its vendors and testing its options.

C. The Commission Should Consider the Realities of the Video Marketplace When Considering Small MVPD Compliance

When considering the marketplace for audibly accessible set-top boxes and their feasibility for small MVPDs, the Commission should also consider the harsh marketplace conditions in which small MVPDs currently operate. Most WTA members are losing money or at best breaking even on their video services because programming content prices are increasing at unsustainable rates, which cannot just be passed on to customers.¹⁷ During the past year, five

¹⁶ Id. at 20.

¹⁷ Comments of WTA – Advocates for Rural Broadband, MB Docket No. 17-214, filed on October 10, 2017, http://w-t-a.org/wp-content/uploads/2017/10/filing.videocompetition.final_.101017.pdf; Comments of WTA –

(5) WTA members have terminated their video services, while others are seriously considering the option. One has to wonder what will be the final straw that will force a small MVPD out of the marketplace.

It should also be noted that the industry as a whole is shifting from set-top boxes. A recent report by the Government Accountability Office noted that set-top boxes have a “significant but diminishing role in delivering programming in an evolving market.”¹⁸ The Report noted that due to outside competition by online video distributors “many MVPDs have begun offering content over the Internet to subscribers, accessible on many Internet-capable devices, including streaming devices that display it on televisions.”¹⁹ Though the Report admitted that most customers still lease a set-top box from an MVPD, it added that most MVPDs now allow customers to access content without a set-top box.²⁰

WTA members have found that the replacement and maintenance of set-top boxes adds another burden to companies that already have limited resources and capital. On average, set-top boxes cost roughly \$160-240 per box and often are the cause of customer service visits where technicians have to drive long distances to either fix or replace a malfunctioning box. As a result, WTA members have embraced the use of third party devices so their customers can watch the content they want. As their usage and market penetration increase, these devices are becoming more affordable and more likely to have the latest technology, which improves the customer experience. WTA members expect that the use of third party devices will continue to increase to

Advocates for Rural Broadband, MB Docket No. 15-216, filed on May 9, 2017, <http://w-t-a.org/wp-content/uploads/2017/05/Final-WTA-Comments-on-ATSC-3.0-5.9.2017.pdf>.

¹⁸ Report, FCC Should Conduct Additional Analysis to Evaluate Need for Set-Top Box Regulation, Government Accountability Office, released September 2017, at Introduction, <http://www.gao.gov/assets/690/687512.pdf>.

¹⁹ Id.

²⁰ Id.

the extent that set-top boxes may no longer be leased to customers and all content will soon be over-the-top. Right now, several WTA members do just that. One member remarked that the only thing stopping more small MVPDs from doing so are restrictions placed by broadcasters that prevent them from airing local broadcasts over-the-top (“OTT”).

It is especially worth noting that the evolving market in the distribution and delivery of video services is benefitting those with differing abilities. The creators of these OTT devices are large and have favorable economies of scale that allow them to better design their products so they are accessible to all. For example, the streaming box, Roku, offers an audio guide that is a “text-to-speech screen reader that assists customers with navigation of the Roku user interface and onscreen menus.” Roku also offers close captioning for those with difficulty hearing.²¹ The company’s competitors Apple²² and Amazon²³ offer similar features in their respective streaming boxes the Apple TV and the Amazon Fire.

When Congress passed the Communications and Video Accessibility Act in 2010, most of the video market we now know did not exist. The number of subscriptions to an MVPD service nationwide hit an all time high soon after in 2012, but since then there has been a steep decline in subscribership and resulting revenues.²⁴ Small MVPDs have not been immune to this trend. This coupled with skyrocketing programming costs has made offering video services a losing game for small MVPDs. As such, the Commission should take a broad view at the

²¹ Accessibility, Roku, accessed Nov. 9, 2017, <https://www.roku.com/accessibility>.

²² Accessibility, Apple, accessed Nov. 9, 2017, <https://www.apple.com/accessibility/tv/>.

²³ Accessibility Features for Fire TV, Amazon, accessed on Nov. 9, 2017, <http://www.amazon.com/gp/help/customer/display.html?nodeId=202105050>.

²⁴ Nathan McAlone, Get Ready for Traditional TV To Have Historically Brutal Subscriber Losses This Quarter, Business Insider, June 6, 2017, <http://www.businessinsider.com/cable-tv-subscriber-losses-q2-chart-2017-6>.

marketplace when considering when and if small MVPDs are prepared to implement these new rules.

Conclusion

By giving small MVPDs more time to comply with the video accessibility rules, the Commission expected large MVPDs to set standards that smaller providers could then adopt. This assumption has not come to fruition. Rather, there are now options that are either cost prohibitive or not fully compliant. Regardless, the Commission should proceed in a manner that recognizes the reality of the marketplace and does not force small MVPDs to end their video services.

Respectfully submitted,

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