

Before the
Federal Communications Commission
Washington, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2017

Released: March 16, 2017

By the Acting Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a petition filed by Honda Motor Co., Ltd. (Honda) on behalf of its affiliates and subsidiaries requesting that the Federal Communications Commission grant a limited extension of the Commission’s rules requiring the accessibility of user interfaces on covered digital apparatus for certain Honda vehicles. Specifically, Honda requests a 20-month waiver of the accessible user interfaces requirements applicable to rear entertainment systems for the 2017 through 2019 Model Year Honda Odyssey, Honda Pilot, and Acura MDX. For the reasons set forth below, we grant the Petition, subject to the requirement that Honda provide status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau on efforts to develop and integrate accessible technology for rear entertainment systems in Honda vehicles on July 20, 2017 and January 20, 2018.

II. BACKGROUND

2. On October 31, 2013, the Commission adopted rules pursuant to Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to make user interfaces and video programming guides and menus accessible on televisions, set-top boxes, and other devices used to view video programming. Manufacturers of covered digital apparatus are responsible

1 Petition for Limited Waiver of Honda Motor Co., Ltd. Filed on behalf of all its Affiliates and Subsidiaries (filed Dec. 20, 2016) (Petition).

2 Covered digital apparatus are those that are manufactured in or imported for use in the United States and designed to receive or play back video programming transmitted in digital format simultaneously with sound, excluding navigation devices. See 47 U.S.C. § 303(aa)(1); 47 CFR § 79.107(a)(1).

3 Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

4 47 CFR §§ 79.108-79.110. See 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 Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (Accessible User Interfaces Order).

5 See supra note 2. The term “digital apparatus” includes the physical device and the video player(s) capable of displaying video programming transmitted in digital format simultaneously with sound that manufacturers install

(continued....)

for compliance with accessible user interfaces rules for devices manufactured after December 20, 2016, subject to certain exceptions.⁶ Section 79.107 of the Commission's rules requires that such apparatus be designed, developed, and fabricated so that control of appropriate built-in functions (*i.e.*, those functions used for the reception, play back, or display of video programming) included in the apparatus are accessible to and usable by individuals who are blind or visually impaired, if achievable.⁷ In addition, Section 79.109 requires that digital apparatus with built-in closed captioning and/or video description capability include a mechanism that is reasonably comparable to a button, key, or icon for activating the closed captioning and video description.⁸ Manufacturers must also comply with information, documentation, and training and notification requirements to ensure that individuals with disabilities are aware of the availability of accessible digital apparatus and have ready access to information and support that will allow them to operate such devices.⁹

3. Honda is an automaker headquartered in Tokyo, Japan with U.S. subsidiaries engaging in sales, research and development, and manufacturing operations in a number of states.¹⁰ Certain Honda vehicles are equipped, or will in the future be equipped, with a factory installed rear entertainment system that functions like a DVD and Blu ray player allowing rear-seated passengers to view video programming inside the vehicle.¹¹ These vehicles include the 2017 through 2019 Model Year Honda Odyssey, Honda Pilot, and Acura MDX. For the reasons discussed below, Honda requests that the Commission grant a limited waiver of the accessible user interfaces requirements that are applicable to rear entertainment systems on its vehicles.¹² The Media Bureau issued a Public Notice seeking comment on the Petition,¹³ and the National Federation of the Blind (NFB) and a consortium of consumer and academic groups representing the deaf and hard of hearing and blind and visually impaired communities (Consumer

(Continued from previous page) _____

into the devices they manufacture before sale or direct consumers to install after sale, whether in the form of hardware, software, or a combination of both. *See* Note 1 to 47 CFR § 79.107(a)(1).

⁶ *See* 47 CFR §§ 79.107(b), 79.109(c); *Accessible User Interfaces Order*, 28 FCC Rcd at 17353-54, paras. 38-39. Certain categories of digital apparatus such as display-only monitors and video projectors and devices primarily designed for purposes other than displaying video programming are subject to a five-year deferred compliance deadline. 47 CFR § 79.107(b)(1)-(3).

⁷ 47 CFR § 79.107(a)(1)-(4).

⁸ *Id.* § 79.109(a)(1)-(2).

⁹ *See id.* § 79.107(a)(5) (defining “usable” to mean that “individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities”); *id.* § 79.107(d) (imposing information, documentation, and training requirements on manufacturers of digital apparatus); *id.* § 79.107(e) (imposing consumer notification requirements on manufacturers of digital apparatus that will require manufacturers to publicize the availability of accessible devices on their websites, and to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment). *See generally* *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015) (*Second Accessible User Interfaces Order*).

¹⁰ Petition at 1.

¹¹ *See id.* at 6. Based on this description, we find that Honda's rear entertainment systems are digital apparatus covered by the Commission's rules. According to Honda, “[f]uture versions of RES soon to be offered to consumers will have increased functionality related to video content.” *Id.*

¹² *Id.* at 2-3.

¹³ *See* Public Notice, *Media Bureau Seeks Comment on Petition for Waiver of Accessible User Interfaces Requirements of Honda Motor Co., Ltd.*, DA 16-1440, MB Docket No. 12-108 (rel. Dec. 22, 2016).

Groups) filed comments in response to Honda's request for waiver.¹⁴ As discussed in more detail below, NFB filed the only opposition to the requested waiver.

4. We evaluate Honda's waiver request pursuant to the general waiver authority in Section 1.3 of the Commission's rules.¹⁵ To waive a requirement for good cause, we must (1) explain why deviating from the general requirement serves the public interest, and (2) explain the nature of the special circumstances.¹⁶

III. DISCUSSION

5. We find that there is good cause to grant a limited waiver of the accessible user interfaces requirements to give Honda time to develop and integrate accessible technology for rear entertainment systems on the 2017 through 2019 Model Year Honda Odyssey, Honda Pilot, and Acura MDX.¹⁷ Honda contends that it was not aware of the impact of the Commission's accessibility requirements on automobile manufacturers until shortly before the compliance deadline and that existing hardware and software for Honda rear entertainment systems do not provide the required accessibility.¹⁸ Since learning of the requirements, Honda has begun steps to integrate accessibility features into rear entertainment systems.¹⁹ Although Honda "fully intends to offer [rear entertainment system] options that achieve the functionality sought by the [CVAA]," it will need to redesign operating system electronics for the rear entertainment systems to accommodate the necessary technology.²⁰ Honda asserts that it cannot integrate this technology into vehicles that are already slated for production without suspending both production and sales of these vehicles—a result which Honda claims would be detrimental to the public.²¹ Consumer Groups do not object to Honda's Petition.²²

¹⁴ Comments of the National Federation of the Blind, MB Docket No. 12-108 (Jan. 11, 2017) (NFB Comments); Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Hearing Loss Association of America (HLAA), Communication Service for the Deaf, Inc. (CSD), Deaf Seniors of America, Cerebral Palsy and Deaf Organization, National Association of State Agencies of the Deaf and Hard of Hearing, Inc., Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), American Foundation for the Blind (AFB), and American Council of the Blind (ACB), MB Docket No. 12-108 (Jan. 11, 2017) (Consumer Groups Comments).

¹⁵ 47 CFR § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."). We note that the Commission generally delegated authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider waiver requests of the rules adopted in the *Accessible User Interfaces Order*. *Accessible User Interfaces Order*, 28 FCC Rcd at 17423, para. 165. See 47 CFR §§ 0.61, 0.283, and 1.3.

¹⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ See Petition at 2-3. Acura is a luxury brand designed and manufactured by Honda. *Id.* at 2.

¹⁸ See *id.* at 2, 6. Honda also indicates that the accessibility requirements did not become apparent from benchmark testing of competitor vehicles, which did not reveal accessibility features for consumers who are blind and visually impaired. *Id.* at 6.

¹⁹ See *id.* at 6-7.

²⁰ See *id.* at 2, 6-7.

²¹ See *id.* at 6-8.

²² See generally Consumer Groups Comments. While expressing some concern that accessibility features were not included in Honda's current rear entertainment system design, Consumer Groups note that they "appreciate Honda's expressed support for the accessibility requirements of Section 204 of the [CVAA], as well as its assurance that it

(continued...)

6. NFB, the only commenter to oppose the Petition, contends that the Commission's accessibility rules have been in place since 2013, and that Honda has had ample time to design its rear entertainment systems to conform to these rules.²³ While we agree that lack of knowledge of the Commission's rules generally does not constitute good cause for a waiver, we believe that there are compelling special circumstances in the context of this specific waiver request that warrant a deviation from the general rule.²⁴ In particular, this is a limited waiver granted to an automobile manufacturer not traditionally subject to FCC regulation that will bring a narrow category of devices into compliance with accessibility rules. In the absence of a waiver, Honda would need to suspend production and sales of its vehicles in order to undertake the necessary hardware and software changes for its rear entertainment systems. According to Honda, this would negatively impact the public because it would decrease the options for fuel-efficient and safe vehicles available to consumers, would require temporary layoffs or furloughs of Honda employees, and would have negative financial consequences to Honda that could jeopardize jobs in the United States.²⁵ Alternatively, Honda could cease offering rear entertainment systems on Honda vehicles, leaving all passengers without the benefit of this feature.²⁶ We concur that temporarily suspending production of Honda vehicles would be contrary to the public interest, and we also take into account Honda's commitment to develop and integrate accessibility features for rear entertainment systems as expediently as possible based on production schedules for the subject vehicles.²⁷

7. We agree with Honda that a waiver period of 20 months is warranted. Honda sets forth a detailed plan for implementing the required accessibility, which it estimates will take 20 months.²⁸ This plan accounts for the time needed to undertake various implementation steps including, hardware design investigation, ordering component parts and related assembly, testing, and software development.²⁹ According to Honda, upon expiration of the requested waiver, all subject vehicles will be manufactured in compliance with the Commission's accessible user interfaces requirements, with each rear entertainment system providing the required accessibility technology.³⁰

8. Although we recognize the concerns of NFB that this is a lengthy waiver period, we find that NFB has not submitted specific evidence demonstrating that Honda reasonably could come into compliance in a shorter period. NFB asserts that Honda's rear entertainment system platforms can be configured similarly to Apple's touch-screen products, which utilize a built-in screen reader to make functions audibly accessible, "without significant changes to hardware."³¹ NFB also generally cites existing guidelines for accessible design, which it says can be used to guide the design of rear entertainment systems.³² However, NFB does not provide any specific evidence to refute Honda's assertion that "the entire operating system and hardware components must be significantly altered or replaced" to incorporate accessible functions for rear entertainment systems or to counter the detailed

(Continued from previous page) _____

'fully intends to offer' options of its rear entertainment system ('RES') 'that achieve the functionality sought by the [CVAA].'" *Id.* at 2.

²³ See NFB Comments at 1.

²⁴ See *Northeast Cellular Tel. Co.*, 897 F.2d at 1166; Consumer Groups Comments at 3.

²⁵ See Petition at 7.

²⁶ See *id.* at 8.

²⁷ See *id.* at 8-10.

²⁸ *Id.* at 10-11.

²⁹ *Id.* at 11.

³⁰ *Id.* at 3.

³¹ See NFB Comments at 2-3.

³² See *id.* at 3.

timeline for achieving compliance set forth by Honda.³³

9. We find the evidence that Honda has put forward to be credible and that a 20-month waiver period is merited to give Honda sufficient time to develop and integrate technology that will make rear entertainment systems in Honda vehicles accessible in accordance with the Commission's rules. Specifically, the requirements of Sections 79.107 and 79.109 are waived for the following vehicles manufactured between December 20, 2016 and August 20, 2018: Honda Odyssey Model Years 2017, 2018, and 2019; Honda Pilot Model Years 2017, 2018, and 2019; and Acura MDX Model Years 2017, 2018, and 2019.³⁴ While there is no obligation to retrofit subject vehicles that are manufactured during the waiver period,³⁵ we emphasize that Honda will be required to comply with all applicable accessibility requirements for any vehicle manufactured after August 20, 2018. As Consumer Groups note, this includes the requirement that built-in functions used for the reception, play back, or display of video programming on digital apparatus be accessible to and usable by individuals who are blind or visually impaired, as well as the requirement that built-in video description and closed captioning functions be accessible through a mechanism that is reasonably comparable to a button, key, or icon.³⁶ This also includes the requirement to ensure that individuals with disabilities are aware of the availability of accessible devices and have ready access to information and support that will allow them to operate such devices.³⁷

10. In addition, we agree with NFB and Consumer Groups that Honda should be required to submit status reports as part of any granted waiver to demonstrate its progress toward achieving compliance upon expiration of the waiver period.³⁸ Honda notes that it is willing to submit status reports during the waiver period to keep the Commission informed of its progress.³⁹ We find that Honda must provide status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau on its efforts to develop and integrate accessible technology for rear entertainment systems in Honda vehicles on July 20, 2017 and January 20, 2018.⁴⁰ The initial report should include a description of how Honda plans to make appropriate functions on rear entertainment systems accessible to individuals who are blind or visually impaired and how it plans to make built-in video description and closed captioning functions accessible through a mechanism reasonably comparable to a button, key, or icon. Both reports should include information about Honda's progress toward meeting all applicable accessibility obligations, as well as a detailed plan and timeline for achieving full compliance during the waiver period.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 613, and

³³ Petition at 7, 10-11.

³⁴ *Id.* at 2-3.

³⁵ *See id.* at 3.

³⁶ 47 CFR §§ 79.107(a)(1)-(4), 79.109(a)(1)-(2). *See* Consumer Groups Comments at 2.

³⁷ 47 CFR §§ 79.107(a)(5), 79.107(d), 79.107(e). *See* Consumer Groups Comments at 3.

³⁸ *See* Consumer Groups Comments at 3; NFB Comments at 3.

³⁹ Petition at 11.

⁴⁰ The status reports shall be sent in hard copy via certified mail to Maria Mullarkey, Assistant Division Chief, Policy Division, Media Bureau, Federal Communications Commission, Room 4-A739, 445 12th Street SW, Washington, DC 20554, with copies submitted electronically to Maria.Mullarkey@fcc.gov; Michelle Carey, Acting Chief, Media Bureau, Michelle.Carey@fcc.gov; Martha Heller, Chief, Policy Division, Media Bureau, Martha.Heller@fcc.gov; Alison Kutler, Chief, Consumer & Governmental Affairs Bureau, Alison.Kutler@fcc.gov; and Suzanne Rosen Singleton, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Suzanne.Singleton@fcc.gov.

Sections 0.61, 0.283, and 1.3 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and 1.3, this Memorandum Opinion and Order IS ADOPTED.

12. **IT IS FURTHER ORDERED** that the petition for waiver of Sections 79.107 and 79.109 of the Commission's rules, 47 CFR §§ 79.107, 79.109, filed by Honda Motor Co., Ltd. IS GRANTED, subject to the requirement that, on July 20, 2017 and January 20, 2018, the Petitioner provides status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau of the FCC on efforts to develop and integrate accessible technology for rear entertainment systems in Honda vehicles.

13. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Acting Chief, Media Bureau