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August 22, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Filed electronically via ECFS

Re: Status Report on Waiver of Accessible User Interfaces Requirements of Honda Motor Co., Ltd, MB Docket No. 12-108

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc., Cerebral Palsy and Deaf Organization, Communication Service for the Deaf, Inc., Hearing Loss Association of America, National Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (collectively, “Consumer Groups”), along with Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC) at Gallaudet University and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) at Trace Research & Development Center (collectively, “RERCs”) respectfully comment on the July 20, 2017 Status Report filed by Honda Motor Co., Ltd. (“Honda”)¹ concerning its compliance with its limited waiver of user interface accessibility requirements (“Status Report”) of the Twenty-First Century Communications and

¹ Honda Motor Co., Ltd. Status Report, MB Dkt. No. 12-108 (July. 20, 2017) (“Honda Status Report”).

Video Accessibility Act of 2010 (“CVAA”). The Federal Communications Commission (the “Commission” or “FCC”) granted Honda this limited waiver on March, 16, 2017 (“Order”)² in response to a petition filed by Honda on December 20, 2016 (“Petition”).³ Consumer Groups and RERCs commented on the Petition,⁴ but Honda did not file a response to their concerns.⁵ The proposed solution described in Honda’s status report does not meet the CVAA requirements for digital apparatus and Consumer Groups and RERCs oppose what is, in effect, a request for unconditional extension of the waiver to bring the Acura MDX into compliance without adequate showing of cause.⁶

Honda’s proposed solution does not meet the CVAA requirements

In its Petition, Honda stated that it “fully intends to offer RES options that achieve the functionality sought by the [CVAA].”⁷ Consumer Groups and RERCs did not oppose Honda’s Petition for waiver, so long as “Honda acknowledge[d] the full breadth of its obligations under the CVAA” in its implementation plan.⁸ In particular, to meet all CVAA requirements and Commission rules, Consumer Groups and RERCs noted that Honda is obligated to “ensure that digital apparatus, such as Honda’s RES, are accessible to individuals . . . who are deaf or hard of hearing and those who are blind or visually impaired.”⁹ The Commission explicitly echoed this in its order granting the limited waiver.¹⁰ In a step forward from its Petition, Honda did acknowledge in its Status Report that it is obligated to make its RES accessible for both the “visually and hearing impaired.”¹¹ However, it seems apparent that Honda’s proposed solution violates the letter and spirit of the CVAA and Commission rules.

Honda should provide clarity on whether its RES has built-in closed captioning, subtitles, or both. As Honda acknowledged in its Status Report, the CVAA requires manufacturers to ensure that a digital apparatus with built-in closed captioning complies with the rules.¹²

² *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Memorandum Opinion and Order, MB Docket No. 12-108, 32 FCC Rcd 1926 (Mar. 16, 2017) (“Honda Order”).

³ Petition for Limited Waiver of Honda Motor Co., Ltd. Filed on behalf of All Its Affiliates and Subsidiaries, MB Dkt. No. 12-108 (Dec. 20, 2016) (“Honda Petition”).

⁴ Comments of Consumer Groups and DHH-RERC, MB Dkt. No. 12-108 (Jan. 11, 2017) (“Consumer Groups Comments”).

⁵ Honda also did not serve Consumer Groups and RERCs with a copy of its Status Report.

⁶ Honda met with Commission staff on August 17, 2017 to discuss its Status Report, but it does not appear that it provided any details that change the concerns identified in these comments. *See* Notice of written and oral ex parte presentation under 47 CFR 1.1206, Honda Motor Co., Ltd., MB Docket No. 12-108 (Aug. 21, 2017).

⁷ Honda Petition at 2.

⁸ Consumer Groups Comments at 3.

⁹ *Id.* at 2.

¹⁰ Honda Order at 1930.

¹¹ Honda Status Report at 3.

¹² *See id.*; *see also* 47 U.S.C. 204(a)(3); 47 C.F.R. 79.109(a)(1) (referring only to digital apparatus “with built-in closed-captioning capability”).

However, in its description of how users activate accessibility features, Honda describes how users can turn on “subtitles,”¹³ an altogether different feature with a different purpose. The Commission should ask Honda to explicitly clarify which features are included in its RES and whether its proposed solution is designed to activate closed captioning. If the RES does not have built-in closed captioning, Consumer Groups and RERCs urge Honda to incorporate it.

Honda’s proposed solution for activating “subtitles” and/or captioning is not at all intuitive and goes against the letter and spirit of the CVAA and corresponding rules. The CVAA requires that digital apparatus have “a mechanism that is reasonably comparable to a button, key, or icon *designated* for activating the closed captioning or accessibility features.”¹⁴ The spirit of the law is to ensure that individuals with disabilities, like all other consumers, have simple, intuitive methods to configure a digital apparatus. Rather than having one designated button, key, or icon for activating closed captioning, Honda requires users to press two unrelated buttons four times.¹⁵ And by requiring individuals with disabilities to activate an “Accessibility Mode” before being able to turn on closed captioning and video description features,¹⁶ Honda is adding an unnecessary layer of complication.

Other obvious solutions are simpler, more intuitive, and comply with both the letter and spirit of the CVAA. In its 2013 Order interpreting the CVAA, the Commission reiterated Congress’s intent that individuals with disabilities have ready access to accessibility features.¹⁷ Honda’s requirement that two different buttons be pressed four times is not ready accessibility. Conversely, Honda could ensure its OnScreen Display menu has an intuitive way to turn on closed captioning (e.g., a well-labeled icon that is easy to find with minimal button clicks).¹⁸ Honda’s Status Report states that users can use its OnScreen Display menus to turn on accessibility features,¹⁹ but contrary to the FCC’s instructions,²⁰ it did not *describe* how individuals with disabilities could access those features using the OnScreen display menu.²¹ Consumer Groups and RERCs ask the Commission to instruct Honda to abandon its multi-button solution, have it describe how individuals with disabilities can activate the accessibility features

¹³ Honda Status Report at 4.

¹⁴ 47 U.S.C. 204(a)(3) (emphasis added).

¹⁵ Honda Status Report at 3-4.

¹⁶ Honda Status Report at 3.

¹⁷ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 12-108, 28 FCC Rcd 17330, 17381-82 (Oct. 29, 2013) (“2013 Order”).

¹⁸ The Commission could direct Honda to its 2013 Order, which provides further guidance on what constitutes a reasonably comparable mechanism. *See id.* at 17380-84. Additionally, the Commission helpfully provides companies with a non-exhaustive list of possible digital apparatus functions at 47 C.F.R. 79.107(4).

¹⁹ *See* Honda Status Report at 3-4.

²⁰ Honda Order at 1930 (requiring the initial status report to “include a description of how Honda plans to make appropriate functions on rear entertainment systems accessible”).

²¹ Consumer Groups and RERCs have acknowledged that this accessibility could be achieved by allowing consumers to activate captions from the first level of a menu. *See, e.g.,* Reply Comments of Consumer Groups and RERC, MB Docket No. 12-108 (Mar. 7, 2016).

using the RES OnScreen Display menu, and evaluate whether this solution complies with the CVAA.²²

Honda's inaccessible implementations of accessibility features demonstrate a broader failure to carefully consider accessibility in its design process as the CVAA requires. According to Honda's Status Report, after an individual presses the "Home" button on the remote four times to turn on "Accessibility Mode," "the audio will announce through the headphones 'Accessibility Mode Active.'"²³ Then after the individual presses the "Enter" button four times to turn on "subtitles" (again, presumably closed captioning), "the audio will announce through the headphones 'Subtitles Active.'"²⁴ This complicated design, and its use of audio output to activate accessibility features for deaf and hard of hearing consumers, defies logic. It also demonstrates that Honda has not truly considered its obligation to serve individuals who are deaf, deafblind, hard of hearing, or who have additional disabilities. The Commission should guide Honda toward a solution that uses the RES OnScreen Display to show that accessibility features are activated for deaf and hard of hearing individuals.

These shortcomings could have been prevented. There is no indication in its Status Report that Honda or its supplier engaged in a needs assessment with a select control group of individuals who are deaf, deafblind, hard of hearing, or who have additional disabilities. Such interaction with select members of the disability community is vital for all companies to ensure they are compliant with existing accessibility laws.

Honda has not shown cause why it should be granted a waiver extension for its Acura MDX

Consumer Groups and RERCs oppose any extension of the waiver for the Acura MDX without the Commission soliciting additional information from Honda and giving stakeholders further opportunity to comment. Honda, in its Petition, assured the Commission that "[u]pon expiration of the waiver, *all* Subject Vehicles will be manufactured in compliance with the Act, with each RES system providing the required accessibility technology."²⁵ Consumer Groups and RERCs did not oppose the Petition in part because of the reasonableness of the timeframe requested under the circumstances. The Commission reiterated that the assurances and reasonableness of the timeframe were substantial factors in its granting the waiver.²⁶ Now,

²² If Honda does not incorporate voice or gesture control, *see* 2013 Order at 17382, it may need to keep a solution using the remote for blind and visually impaired individuals to activate the audio output that accompanies on-screen displays, as required by 47 U.S.C. 204(a)(2). However, it may not need a remote solution to activate built-in video descriptions if that is also included in the OnScreen Display menu. Thus, it should be able to provide a more intuitive solution for activating the audio output, since the remote will now only need to be used to activate one, specific accessibility feature. That being said, Consumer Groups and RERCs maintain that pressing one button unrelated to configuration four times is not even a sufficient method to activate the audio output.

²³ Honda Status Report at 3-4.

²⁴ *Id.* at 4.

²⁵ Honda Petition at 3.

²⁶ Honda Order at 1929.

Honda is going back on its word and without making the showing of good cause necessary to support a further waiver.

As a first matter, the way in which Honda is treating its anticipated failure to meet the waiver deadline suggests that it either intends to operate in violation of the laws and rules following the expiration of the waiver or that it expects the Commission to extend the waiver on its own. In its Status Report, Honda did not petition the Commission for a further waiver. Rather it simply told the Commission that it would not meet the August 20, 2018 deadline and that it would not come into compliance until Spring 2020, at the earliest.²⁷ Barring Commission action, Honda would start violating the law on August 20, 2018.

In any event, the Commission should not grant an extension of the waiver. Honda acknowledged in its Petition that while the Commission has the discretion to waive rules on its own motion, “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁸ To show good cause in its original Petition for waiver, Honda described why it was not going to meet the deadline prescribed in the rules, the steps it had already taken to determine how to bring its vehicles into compliance, the reasons why it would need to redesign and develop new equipment to come into compliance, a “detailed plan” for implementing the modifications, a description of how halting manufacturing could result in job losses, and assurances that it would meet the deadline it requested in the waiver.²⁹ Based on this wealth of information, the Commission found that “there are compelling special circumstances in the context of this specific waiver request that warrant a deviation from the general rule.” It went on to state that, although this waiver is “lengthy,” this is a limited waiver granted to an automobile manufacturer not traditionally subject to FCC regulation” that will “give Honda time to develop and integrate accessible technology.”³⁰

In its Status Report, Honda has not shown the good cause necessary to demonstrate that this is a special circumstance warranting further waiver for its Acura MDX. In fact, it demonstrates the opposite. For example,

- Honda stated in its Status Report that it has taken seven months for it to “determine[] that the MDX’s hardware is incapable of supporting the software changes necessary to bring the MDX RES into compliance with the Act.”³¹ But Honda said in its original Petition that the MDX hardware and software was unlikely to support the changes necessary³² and the Commission acknowledged that Honda would “need to redesign operating system electronics” when it granted the initial waiver.³³ It is a mystery why it has taken Honda seven months to determine what it already knew.
- Honda said in its Status Report that its supplier for the MDX RES “does not have the requisite expertise with the necessary hardware or software to bring the MDX’s RES into

²⁷ Honda Status Report at 8.

²⁸ Honda Petition at 4 (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); *see also* 47 C.F.R. 1.3.

²⁹ *See* Honda Petition; *see also* Honda Order.

³⁰ *Id.* at 1928, 1929.

³¹ Honda Status Report at 6.

³² Honda Petition at 9-10.

³³ Honda Order at 1928.

compliance.”³⁴ But it did not explain why its supplier no longer has the requisite expertise to modify *its own* hardware and software, whether it sought other technical expertise outside of this supplier to modify the existing equipment, or whether it explored finding another supplier to provide equipment that will allow the MDX to be in compliance by the deadline.

- Honda said in its Petition that it “is actively experimenting with alternative methods of integrating any necessary technology.”³⁵ It does not explain now whether these efforts were successful or why they were not.
- Honda does not explain why it requires more time to comply with the rules than all other manufacturers were given initially. When the Commission adopted its rules under the CVAA on October 31, 2013, it gave manufactures until December 20, 2016—roughly three years and two months—to ensure that all digital apparatus were in compliance with the law and rules.³⁶ In its Petition, Honda said it first became aware that it may be subject to the CVAA and corresponding rules shortly before the December 20, 2016 deadline. Even if it only knew a month prior, a waiver extension to, for example, the first day of Spring in 2020—March 19—would give Honda at least three years and four months to come into compliance. That is two months more than all other manufacturers received. And Honda cannot even assure that it will meet that deadline.³⁷

It is clear that Honda has not explored all available options to bring the MDX into compliance by the deadline granted in the waiver and thus it does not have good cause for receiving an additional waiver. The Commission said in its Order granting the waiver that lack of knowledge is not a sufficient reason by itself to be noncompliant with the rules.³⁸ The Commission should now clarify that lack of effort is also insufficient reason.

Respectfully submitted,

/s/ _____
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³⁴ Honda Status Report at 6.

³⁵ Honda Petition at 11.

³⁶ 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).

³⁷ Honda Status Report at 6.

³⁸ Honda Order at 1929.

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