



Consumer Electronics Association
1919 South Eads Street
Arlington, VA
22202 USA
(866) 858-1555 toll free
(703) 907-7600 main
(703) 907-7601 fax
www.CE.org

Via Electronic Filing

February 13, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation – MB Docket Nos. 12-108 & 12-107

Dear Ms. Dortch:

This is to notify you that on February 11, 2015, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), together with Bill Belt, Senior Director, Technology and Standards, CEA, Alex Reynolds, Senior Manager and Regulatory Counsel, CEA, and CEA outside counsel William Maher and Christopher Clark of Wilkinson Barker Knauer, LLP, met with Michelle Carey, Mary Beth Murphy, Steve Broeckaert, Maria Mullarkey, and John Kiefer of the Media Bureau, and Karen Strauss, Rosaline Crawford, and Eliot Greenwald of the Consumer and Governmental Affairs Bureau.

During the meeting, Commission staff raised a number of issues posed in the pending Further Notice of Proposed Rulemaking (“FNPRM”) and regarding the petition for reconsideration filed by the National Association of the Deaf and other advocacy groups (“PFR”) in the above-captioned proceedings.¹ CEA representatives stated CEA’s positions (summarized in the

¹ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17413-20 ¶¶ 138-52 (2013); National Association of the Deaf et al., Petition for Reconsideration, MB Docket Nos. 12-108 & 12-107 (filed Jan. 20, 2014).

attached outline) on those issues, consistent with CEA's comments and reply comments on the *FNPRM* and CEA's opposition to the PFR.²

Pursuant to Section 1.1206 of the Commission's rules,³ this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees from the Commission. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ **Julie M. Kearney**

Julie M. Kearney
Vice President, Regulatory Affairs

cc: Michelle Carey
Mary Beth Murphy
Steve Broeckaert
Maria Mullarkey
John Kiefer
Karen Strauss
Rosaline Crawford
Eliot Greenwald

² CEA Comments, MB Docket Nos. 12-108 & 12-107 (filed Feb. 18, 2014); CEA Reply Comments, MB Docket Nos. 12-108 & 12-107 (filed Mar. 20, 2014); CEA Opposition, MB Docket Nos. 12-108 & 12-107 (filed Feb. 18, 2014).

³ 47 C.F.R. § 1.1206.

**CEA EX PARTE MEETING AGENDA – CVAA
User Interfaces, Guides and Menus
FNPRM and
National Association of the Deaf et al. Petition for Reconsideration
(MB Docket Nos. 12-108 & 12-107)**

1. Introduction/Background on CEA

- a. CEA is the principal U.S. trade association for the consumer electronics and information technologies industries. (CEA FNPRM Comments at 1 n.1)
- b. 2,000 member companies cumulatively generate more than \$223 billion in annual factory sales.
- c. CEA and its member companies have been deeply involved in CVAA implementation, including the VPAAC advisory process and production of the VPAAC's User Interfaces Report.

2. The Commission should apply its existing definition of “usable” to “appropriate” built-in apparatus functions.

- a. The Commission should rely on the definition of “usable” in Section 6.3(l) of its rules for purposes of implementing Section 303(aa) of the Communications Act. (FNPRM Comments at 2)
 - i. As the FNPRM notes, the definition of “usable” in Section 6.3(l) is “well established,” and the Commission consistently has applied this definition in other CVAA contexts. (FNPRM Comments at 2-3)
 - ii. Applying that definition in this context would provide clarity and certainty to manufacturers of digital apparatus, many of whom already have experience developing products according to that standard. (FNPRM Comments at 3)
 - iii. Relying on the definition of “usable” in Section 6.3(l) also would be consistent with the Order’s reliance on the relevant portions of Section 6.3(a) of the rules to define “accessible.” (FNPRM Comments at 3)
- b. However, the Commission should clarify that the usability standard of Section 6.3(l) applies only with respect to the “appropriate” built-in functions of covered digital apparatus, and only to the extent the apparatus includes those functions. (FNPRM Comments at 3-4)

3. The CVAA does not authorize any restriction on the means for accessing closed caption display settings (like font, color, or size of captions). The Commission should not impose a “reasonably comparable to a button, key or icon” requirement on accessing these settings.

- a. The plain language of Sections 303(aa)(3) and 303(bb)(2) limits the requirement for a mechanism “reasonably comparable to a button, key, or icon” to activating the basic accessibility features specified in those sections. (CEA FNPRM Reply Comments at 2)
 - i. Section 303(aa)(3) identifies built-in closed captioning and video description capability as the two basic features that covered digital apparatus must provide access to via a mechanism “reasonably comparable to a button, key, or icon.” (FNPRM Reply Comments at 2)
 - ii. Similarly, Section 303(bb)(2) identifies built-in closed captioning capability as the only feature that navigation devices must provide access to via a mechanism “reasonably comparable to a button, key, or icon.” (FNPRM Reply Comments at 2)
 - iii. Neither provision even mentions closed caption display settings or mandates the means for accessing such features on covered devices. (FNPRM Reply Comments at 2-3)
- b. A mechanism “reasonably comparable” to a dedicated “button, key, or icon” is not appropriate for closed caption display settings which, unlike activation activities that have binary settings (on/off), contain multiple options that are not so readily managed using such a mechanism. (FNPRM Reply Comments at 4)

4. The Commission should not impose a “reasonably comparable to a button, key or icon” requirement on the means for accessing the secondary audio stream for audible emergency information on apparatus covered by Section 203.

- a. Section 203 does not require or at all refer to a mechanism “reasonably comparable to a button, key, or icon” for accessing the secondary audio stream for emergency information or any other accessibility features. (FNPRM Reply Comments at 5)
- b. Section 203 merely requires covered apparatus to have the capability to display closed-captioned video programming and make available video description and emergency information in a manner that is accessible to the blind and visually impaired. The “reasonably comparable to a button, key, or icon” requirements for user control activation mechanisms are expressly limited to the context of Sections 204 and 205. (FNPRM Reply Comments at 5-6)
- c. Nonetheless, blind and visually impaired individuals still will have access to audible emergency information on the secondary audio stream despite the fact that Section 203 does not authorize a mandate on the means for accessing such information. (FNPRM Reply Comments at 6)
 - i. Pursuant to the User Interface Order, covered digital apparatus with built-in video description capability must ensure that video description – also provided on the secondary audio stream – can be activated through a mechanism that is

reasonably comparable to a button, key, or icon. (FNPRM Reply Comments at 6)

- ii. Moreover, as NCTA points out, blind and visually impaired cable customers will have access to on-screen material on navigation devices, including audible information about where to locate video description on the secondary audio stream. (FNPRM Reply Comments at 6)

5. A website consumer notification requirement for navigation device manufacturers could be reasonable, but the Commission should not impose a labeling requirement on equipment manufacturers.

- a. The display of accessibility information on the official websites of navigation device manufacturers will adequately publicize the availability of audibly accessible navigation devices and solutions. (FNPRM Reply Comments at 7)
- b. Moreover, relying on the existing definition of “usable” in the Section 204 context will ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for specific, and burdensome, labeling or other notification requirements. (FNPRM Reply Comments at 7)
- c. Mandatory labeling is unnecessary to ensure that consumers will be able to identify digital apparatus and navigation devices with the required accessibility features, and potentially would be counterproductive. (FNPRM Reply Comments at 7)
 - i. CE manufacturers have every incentive to ensure that consumers are well informed about the capabilities of the products they purchase. Misinformed consumers can easily lead to disappointed purchasers and product returns. (FNPRM Reply Comments at 7)
 - ii. In addition, the content of a rule requiring that accessible digital apparatus and navigation devices be so labeled would be extremely difficult to implement. The exact phrasing of the advisory and the rule’s application to various products could be a matter of unproductive debate, creating more uncertainties that will impede the deployment of innovative products. (FNPRM Reply Comments at 8)
 - iii. Instead of mandating how notification is provided at the point of sale, the Commission should permit manufacturers to work with retailers on providing adequate information at the point of sale. It is more productive for companies and industries to provide this information on a dynamic basis according to marketplace feedback. (FNPRM Reply Comments at 8)

6. Additional information, documentation, and training requirements are unnecessary.

- a. Given the other obligations on covered entities, it would be redundant to impose additional information, documentation, and training requirements on manufacturers of digital apparatus and navigation devices. (FNPRM Reply Comments at 8)

- b. There is no need to impose stand-alone information, documentation, and training requirements on manufacturers of digital apparatus, because applying the existing definition of “usable” will satisfy the objectives of Section 303(aa) without additional requirements. (FNPRM Reply Comments at 8)
 - i. The definition of “usable” in Section 6.3(l) of the Commission’s rules already covers information and documentation requirements, and commenters agree that the Commission should rely on this well-established definition. (FNPRM Reply Comments at 8-9)
 - ii. CEA members are well aware that, to meet the existing standard, adequate training must be provided to customers who need it and to employees. (FNPRM Reply Comments at 9)
- c. Stand-alone information, documentation, and training requirements also are not needed to accomplish the objectives of Section 303(bb). (FNPRM Reply Comments at 9)
 - i. Section 303(bb) does not contain the “accessible to and usable by” language upon which the Commission previously has based its information, documentation, and training requirements in contexts involving broader accessibility requirements. (FNPRM Reply Comments at 9)
 - ii. Stand-alone information, documentation, and training requirements are not necessary to ensure that covered entities provide audibly accessible multichannel video programming guides and menus to requesting blind and visually impaired individuals, or that navigation devices provide a mechanism for activating closed captioning that is reasonably comparable to a button, key, or icon. (FNPRM Reply Comments at 9)

7. The Commission should deny the petition for reconsideration (“PFR” or “Petition”) filed by the National Association of the Deaf and other advocacy groups regarding the Report and Order adopted in this proceeding.

- a. The Commission should affirm its codification and reasonable interpretation of Sections 303(aa)(3) and 303(bb)(2) of the Act, as amended by the CVAA, which provide that certain accessibility features must be accessible through a mechanism “reasonably comparable to a button, key, or icon.” (PFR Opposition at 2)
- b. Contrary to the Petition, the Commission’s treatment of the reasonably comparable issue was procedurally sound. (PFR Opposition at 2)
 - i. The NPRM in this docket provided more than adequate notice that the Commission was considering how to interpret the phrase “reasonably comparable to a button, key, or icon.” (PFR Opposition at 2-3)
 - ii. In response to this detailed notice and request for alternative proposals, several parties commented that voice or gesture recognition may provide even

better accessibility than a dedicated physical button, and that some devices do not even have buttons. The Petitioners had an opportunity in the reply round of comments to challenge these comments, which they did not undertake. (PFR Opposition at 3)

- iii. The Commission's finding that voice and gesture commands are compliant mechanisms is a logical outgrowth of the issues and alternatives presented in the NPRM and of the record. (PFR Opposition at 4)
- c. The Commission was justified in finding that voice and gesture controls are compliant with the substantive provisions of Sections 303(aa)(3) and 303(bb)(2) of the Act, contrary to the claims of the Petition. (PFR Opposition at 4)
- i. CEA and others submitted detailed record evidence on this issue. The Commission specifically cited this evidence in finding that voice commands and gestures are compliant with the "reasonably comparable" standard, and discussed how voice and gesture commands are examples of mechanisms that satisfy its examination of the "simplicity and ease of use of the mechanism." (PFR Opposition at 4-5)
 - ii. The Petitioners did not attempt to address the record evidence regarding voice and gesture commands in reply comments or in later ex parte filings. (PFR Opposition at 5)
 - iii. Although the Petitioners argue that allowing voice controls as a compliant mechanism might limit access to closed captioning or other accessibility features for some people with hearing disabilities, they ignore the issues that end users with other types of disabilities may face in using buttons, keys, or icons. (PFR Opposition at 5)
 - iv. Similarly, although the Petitioners express concern about "accepting" gesture-based controls as compliant accessibility mechanisms, they fail to acknowledge that there may be some end users with disabilities who find that gesture-based controls are easier to use than buttons, keys, or icons. (PFR Opposition at 5-6)
- d. Rather than accepting the Petition's attempt to narrow the types of accessibility solutions available to the American public, the Commission should reaffirm that voice and gesture commands satisfy the "reasonably comparable" requirement. (PFR Opposition at 6)