



November 12, 2015

VIA ELECTRONIC FILING

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

RE: Notice of *Ex Parte* Meeting
MB Docket No. 12-108

Dear Ms. Dortch:

On Monday, November 9, 2015, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Blake Reid (Counsel to TDI), Lise Hamlin of the Hearing Loss Association of America (HLAA), Drew Simshaw, Cory Dodds, and Lindsay Buchanan of the Georgetown Law Institute of Public Representation, and Zainab Alkebsi of the National Association of the Deaf (NAD) (collectively, “Consumer Groups”) met with Valery Galasso in the Office of Commissioner Rosenworcel, Matthew Berry in the Office of Commissioner Pai, Robin Colwell in the Office of Commissioner O’Rielly, Chanelle Hardy in the Office of Commissioner Clyburn, and Jessica Almond in the Office of Chairman Wheeler regarding the above-referenced docket.¹

Accessibility of Captioning Display Settings

The Consumer Groups noted that “accessibility features” should be broadly interpreted to include the closed captioning display settings where users can easily adjust the caption’s size, color, background, and more from the first level of a menu. Many users who are deaf and hard of hearing also have a visual disability and benefit from the ability to alter such settings for larger sizes, contrast, and more. It makes little sense to require manufacturers to provide the ability to adjust the captioning display settings but not require accessibility to these very display settings. Users need the ability to readily access caption settings in the menu.

We explained the importance of giving meaning to the term “accessibility features” in the Twenty-First Century Communications and Video Accessibility Act (CVAA). The text of Section 204 directs the Commission to require, if achievable, “that digital apparatus designed to receive or play back video programming transmitted in

¹ See *In the Matter of Accessibility of User Interfaces, and Video Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, MB Dkt. No. 12-108 (rel. Oct. 31, 2013) (“*Order and NPRM*”); Consumer Groups’ Petition for Reconsideration, MB Dkt. No. 12-108 & 12-107 (submitted Jan. 20, 2014)(“*PFR*”).

digital format simultaneously with sound” have “built in access to those closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated for activating the closed captioning or *accessibility features*.” Section 205 further directs the Commission to require “for navigation devices with built-in closed captioning, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or *accessibility features*” (emphasis added). The term “accessibility features” should not be treated as void or insignificant.

Although it is our position that the CVAA provides sufficient authority for the Commission to require simple access to captioning display settings, we believe that the Television Decoder Circuitry Act of 1990 (TDCA) provides additional support for the Commission to require the same so as to ensure equal access to the fullest extent made possible by technology, as opposed to burying captioning display settings in menus.

We urged the Commission to require access to these display settings on the first level of a menu. However, we did not suggest that accessing the captioning display settings via a menu is reasonably comparable to a button, key, or icon. Rather, having such features available at the first level of a menu will fulfill the goals of the CVAA even though the Commission has authority under the statute to require something reasonably comparable to a button, key, or icon. It is a practical solution that will work for both consumers and manufacturers.

An exemplary implementation of caption settings is YouTube, where after clicking the “CC” icon on the menu bar, the user may then click “Options” and a menu screen will appear where the user can adjust the captioning display settings. If the Commission adopts the “first level of a menu” requirement, providing access to captioning display settings can be accomplished in software and would not require hardware design changes. The Consumer Groups support requiring covered entities to consult with consumer groups to determine best practices.

Petition for Reconsideration

The Consumer Groups’ petition urges the Commission to reconsider allowing voice commands and gestures as compliant mechanisms for activating captioning or accessibility features. We explained the dangers of permitting voice and gesture controls to comply with the CVAA user interfaces accessibility requirements and how this interpretation risks denying millions of deaf and hard of hearing people access to the very accessibility features they need to utilize for access.

Many deaf and hard of hearing people cannot speak or speak well enough to use voice controls. Many others, especially those who are elderly or have other disabilities, do not have the requisite mobility needed to use gesture controls. The physical dexterity needed to press a button or key is very limited, while gesture control systems—e.g., those found on the Nintendo Wii or Xbox Kinect—typically require a larger and more significant amount of movement.

Moreover, we shared our concern that the Commission never raised questions in the NPRM about whether voice/gesture controls should be compliant mechanisms for access to captioning and/or captioning display settings.² In the NPRM, voice/gesture controls were only mentioned in the context of controls used by people who are blind or visually impaired. Allowing voice and gesture controls for captioning would not represent a logical outgrowth of the notice and comment process.

The Consumer Groups do not oppose providing new ways to access devices and apparatus, such as through voice and gesture controls. Instead, we explained that it is unacceptable for the Commission to determine that voice or gesture controls can be the sole mechanism for accessing critical accessibility features. Captioning clearly should not be accessible only through voice controls because it is intended for people who are deaf and hard of hearing. Although there is no evidence to suggest that manufacturers are planning on instituting voice-only or gesture-only controls anytime soon, the Commission should acknowledge that future designs with exclusively voice- and gesture-based controls would present a significant problem for a large segment of the deaf and hard of hearing community.

PEG Channels and Program Guides

The Consumer Groups discussed the need to require a symbol or icon that identifies local programs with accessibility options in the programming guide. Users who are deaf and hard of hearing need to be able to find out if a local program will be captioned in the guide rather than having to test each channel. It will allow for easier identification and such an approach is likely to increase engagement with the community and government.

Notice of Accessibility Features

The Consumer Groups also discussed the need to ensure that customers who are deaf and hard of hearing have notice of the availability of accessibility features on devices and digital apparatus and how to access such features. We recommended notice on websites of MVPDs and equipment manufacturers, on a central website for all digital apparatus and navigation devices, on product packaging, and through customer service. We also stressed the need to include step-by-step instructions with pictures in the product packaging on how to access the captioning display settings. Some products already have step by step instructions for how to use them when one first starts it up – similar instructions should be provided for accessibility features like turning on/off the captions and accessing the captioning display features.

While many deaf and hard of hearing people are tech savvy and able to find accessibility features such as the captioning display setting, others are not so savvy and are less comfortable with technology. This also applies to public places since it can be difficult for employees of the establishment to find captioning controls.

² *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus, Notice of Proposed Rulemaking*, MB Dkt No. 12-108 (rel. May 30, 2013) (“NPRM”).

We appreciate the opportunity to discuss such an important topic and look forward to working with the Commission and industry stakeholders to improve the accessibility of user interfaces.

Please do not hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/

Zainab Alkebsi
Policy Counsel, NAD

cc (by email): Valery Galasso
Matthew Berry
Robin Colwell
Chanelle Hardy
Jessica Almond
Karen Peltz Strauss