

televisions, not user interfaces relating to display settings for closed captioning. Even if the TDCA could be stretched far enough to reach the accessibility of captioning display settings, it clearly does not apply to MVPDs as evidenced by prior Commission orders, including those implementing the TDCA and applying it to manufacturers only.

AT&T urges the Commission to not promulgate additional rules where authority to do so does not exist. Such action will impair flexibility and delay or possibly derail progress of manufacturers and MVPDs towards making television and video more accessible, including user interface improvements mandated for later this year. However, if the Commission chooses this route, appropriate development time is essential and AT&T urges that any implementation deadline be no sooner than two years from the date of such order, or two years after the current user interface deadline of December 20, 2016, whichever is later.

II. DISCUSSION

A. The TDCA does not authorize the Commission to regulate the accessibility of display settings of MVPDs.

1. The TDCA authorizes the Commission to regulate the availability of closed captioning, not how display settings are to be accessed.

The TDCA, codified at Communications Act Sections 303(u) and 330(b), was adopted to “enable [] closed-caption decoding capability to be built into new television sets” and “to ensure that closed-captioning continues to be available” as new technology is developed.³ To its substantial credit, the Commission has taken these steps on multiple occasions to make high quality closed captioning available. The Commission now asks whether the TDCA confers authority to adopt rules that would require manufacturers and MVPDs to ensure that user display settings for

³ TDCA, Sec. 2 (7)-(9) (codified at 47 U.S.C. §303, Note).

closed captioning are readily accessible. In essence, the Commission seeks authority to design how users access the device settings that control how “available” closed captioning is displayed. That distinction—between closed captioning availability and settings—is determinative. The TDCA does not provide the Commission with that authority.

The charge in the TDCA for the Commission to ensure the availability of closed-captioning “as new technologies are developed” does not convey that authority. Again, it grants authority to take action to ensure the “availability” of captions, not the manner in which to access the settings that control how those captions are displayed. Even if the Commission could overcome the “availability” scope limitation, it has not established a record as to what “new technologies” have developed that would warrant the imposition of rules regulating display settings. While IP-based video technologies have developed since the Commission’s Orders implementing the TDCA in 2000, those technologies have introduced no impediments to the availability of closed captioning or to how closed captioning display settings are accessed⁴ and thus, present no justification for the Commission to regulate the accessibility of display settings.

Moreover, recent statutes related to accessibility illustrate that Congress did not believe the TDCA conferred authority to the Commission over the accessibility of display settings. For instance, Communications Act §303(bb)(2)—authorizing the Commission to regulate the accessibility of closed-caption *activation* settings—evidences the absence of similar Commission authority to regulate the accessibility of closed-caption *display* setting. If the TDCA’s authorization to the Commission to regulate the availability of closed captioning includes authorization to regulate the accessibility of closed-caption *display* settings, then it necessarily also

⁴ Those IP-based video technologies must provide display settings in a similar manner as video programming provided by MVPDs. *See* 47 C.F.R. §79.4.

includes authorization to regulate the accessibility of closed-caption *activation* settings, and Communications Act §303(bb)(2) would be unnecessary. Congress evidently felt differently, explicitly authorizing the Commission to regulate the accessibility of closed-caption *activation* settings, but not the accessibility of closed caption *display* settings.

2. The TDCA does not authorize Commission regulation of MVPDs.

Even if the TDCA confers authority to regulate the accessibility of display settings, that authority does not extend to the regulation of MVPDs. TDCA section 3 regulates the availability of closed captioning on “apparatus,”⁵ a term that the Commission has consistently interpreted in other accessibility statutes, and even in this docket, as imposing responsibilities on manufacturers, not distributors.⁶ Unlike Section 205 of the 21st Century Communications and Video Accessibility Act,⁷ the TDCA contains no other language that would extend to MVPDs any requirements pertaining to the accessibility of display settings. This interpretation is also consistent with the Commission’s prior TDCA orders.⁸ Absent clear Congressional direction, the Commission should

⁵ While the TDCA prohibits the shipment in interstate commerce, manufacture, assembly, or import into the United States of any apparatus that does not comply with Section 303(u), this language does not grant authorize the Commission to regulate the accessibility of close captioning display settings under that Section.

⁶ Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order, MB Docket No. 11-154, 27 FCC Rcd 787,840-841 (2012); 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, Report and Order, MB Docket No. 12-108, MB Docket No. 12-107, 28 FCC Rcd 17330, 17353 (2013) (“We find that digital apparatus manufacturers have the responsibility to comply with Section 204.”).

⁷ See 47 U.S.C. §303(bb)(3)(A).

⁸ Closed Captioning Requirements for Digital Television Receivers, *Report and Order*, ET Docket No. 99-254, MM Docket No. 95-176, 65 FR 58467 (2000) (“DTV Closed Captioning Order”). Specifically, see DTV Closed Captioning Order, Summary of Requirements, p.4 (“manufacturers

not attempt to impose on MVPDs, or on manufacturers for that matter, accessibility requirements for closed captioning display settings.⁹

B. The Commission should not impose new mandates while covered entities are completing work on existing mandates.

Even if the Commission has the authority to regulate the accessibility of closed captioning display settings, it would be ill-advised to impose the proposed, undefined rules until manufacturers and MVPDs complete work necessary for current mandates. Pursuant to existing Commission rules, equipment manufactured after December 20, 2016 must provide a closed captioning activation mechanism that is reasonably comparable to a button, key or icon and certain controls to access and view video programming must be aurally accessible. To stack additional functions onto these looming requirements before they take effect would be premature and counterproductive, especially when requirements have yet to be spelled out.

C. Any new mandates must be accompanied with sufficient lead time.

If the Commission moves forward with the proposed rules, ample implementation time is necessary. In this case, the undefined nature of the rules makes it impossible to predict an accurate implementation timetable. In other accessibility dockets, the Commission has adopted a two year period to come into compliance. As previously noted, manufacturers are working to comply with user interface rules that go into effect on December 20, 2016. AT&T would recommend a

must begin to include DTV closed captioning functionality in DTV devices in accordance with the rules adopted in the Order by July 1, 2002”); at ¶ 19 (“We believe that referencing the remaining parts into our rules will provide helpful guidance to DTV manufacturers”); at ¶ 51 (“Accordingly, we caution DTV converter manufacturers who chose to implement this option ...”).

⁹ If the Commission decides to move forward with its proposal as to manufacturers, there is even less reason to also hold MVPDs responsible for compliance.

minimum compliance date of two years from this December 20, 2016 date or from the effective date of an order, whichever is later.

II. CONCLUSION

AT&T believes the momentum of better accessibility in television and video should continue, but only within the statutory framework. AT&T urges the Commission to follow that path.

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Respectfully submitted,



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