

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”) files these comments in response to the above-captioned *Second Further Notice of Proposed Rulemaking* (“*Second FNPRM*”), in which the Commission seeks comment on its proposal that would require device manufacturers as well as multichannel video programming distributors (“MVPDs”) to provide readily accessible user display settings for closed captioning.¹ TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. Among their numerous lines of business, TIA member companies design, produce, and deploy a wide variety of devices with the goal of making technology accessible to all Americans.

TIA supports the goal of ensuring consumers have closed captioning features and services available that enable access to television and video content and its members are committed to designing accessible products. However, there is no evidence that additional accessibility rules are necessary or that their implementation would outweigh the potentially significant cost of compliance.

MVPDs and device manufacturers are already working hard to integrate into device and operating system designs the significant revisions to the FCC’s accessibility rules that go into effect in December 2016.² Adopting new closed captioning accessibility rules now would be premature. Until the December 2016 revisions are in place, it is impossible for stakeholders to assess the effect of these rules. Rather than requiring commenters to speculate about whether further regulations might be needed at this time, a better approach would be to provide all stakeholders, including consumers, with the opportunity to assess the effect of the extensive accessibility requirements once a reasonable time frame has passed after implementation of these new rules.

¹ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015) (“*Second FNPRM*”). The portion of the item that is the Second Report and Order will be referred to as the Second Accessible User Interfaces Order.

² See 47 C.F.R. §§ 79.108, 79.109.

If, however, the Commission decides to move forward with the proposal in the *Second FNPRM*, it should base any rules adopted on the joint principles of flexibility and feasibility. TIA's two key areas of concern regarding the proposed rules are the feasibility of the Commission's proposed implementation time frame and the need to ensure that MVPDs and device manufacturers are able to seek a waiver from these rules.

In the *Second FNPRM*, the Commission seeks comment on the appropriate implementation time frame for new rules governing access mechanisms for closed captioning display settings. TIA and its members have concerns about the Consumer/Academic Groups' request for a December 20, 2016 compliance deadline. The FCC "has repeatedly determined [that] manufacturers generally require approximately two years to design, develop, test, manufacture, and make available for sale new products."³ If the FCC adopts its proposed approach, manufacturers would be left with less than a year to successfully make what will be a substantial change to the settings of their devices. In many cases adjusting the level or location where closed captioning settings appear involves significantly more than a simple software change. The factory-level reconfigurations which could be required by the FCC's proposed rules will cost MVPDs and manufacturers both time and money as they struggle to redesign, redevelop, retest, and remanufacture compliant devices. This extensive effort would require significant coordination between multiple internal and external design and engineering teams. Accordingly, a ten month window to come into compliance with additional accessibility rules would be challenging, if not impossible, to meet. If the Commission finds that new rules are necessary, the FCC should adopt a two year compliance window, consistent with regulatory precedent for changes where compliance involves significant adjustments or changes to a product's system or design.⁴

If the Commission adopts new rules, it also must incorporate a mechanism that would allow industry stakeholders to seek waivers or exceptions if they can demonstrate that implementation of the accessibility requirements would be technically infeasible or unduly burdensome.⁵ Congress has consistently ensured that statutory provisions that require manufacturers to make modifications to products or services include considerations of technical or economic feasibility to facilitate continued innovation and growth in the marketplace.⁶ In the case of video services and devices, industry is already working to respond to existing user interface requirements going into effect this year. Imposing new requirements, without providing a mechanism by which MVPDs and device manufacturers can raise case-by-case, good faith requests for exceptions, will place excessive burdens on these entities.

³ *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 ¶ 122 (2012) ("*IP Closed Captioning Order*").

⁴ *See Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 ¶ 112 (2013) (noting that the Commission "has generally afforded manufacturers two years to comply with accessibility requirements under the CVAA").

⁵ 47 U.S.C. §§ 303(u), 303(u)(2). As the Commission notes, the CVAA gives the FCC the authority to waive closed captioning requirements on its own motion or in response to a petition. *See Second FNPRM*, 30 FCC Rcd at ¶ 39; *IP Closed Captioning Order*, 27 FCC Rcd at ¶¶ 97-98, 104-105 (adopting waiver procedures on the basis of technical feasibility and achievability).

⁶ *See* 47 U.S.C. 303(u) (stating that closed captioning under decoder circuitry is required "if feasible"). This qualification was included in the original statutory language and maintained in the 2010 amended version under the CVAA.

In conclusion, additional closed captioning rules are not necessary. Should the Commission decide to adopt its proposed rules, TIA encourages the Commission to assess carefully what actions are necessary and to avoid imposing requirements that would place excessive burdens on industry and serve as a barrier to innovation. Any new rules should allow for at least a two year compliance window, consistent with previous Commission decisions requiring substantial device redesign efforts, and manufacturers and MVPDs should be able to seek compliance waivers.

Respectfully submitted,

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February 24, 2016