

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 CONSUMER TECHNOLOGY ASSOCIATION
F/K/A THE CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Technology Association (“CTA”)¹ respectfully comments on the important issues raised in the Second Further Notice of Proposed Rulemaking (“*Notice*”)² in the above-captioned proceeding. CTA shares the Commission’s continuing commitment to improve access to consumer technologies for people with disabilities, but urges the Commission not to adopt the regulation proposed in the *Notice*, which would impose, without legal authority, a vague “readily accessible” requirement on apparatus display settings for closed captioning.³

¹ The Consumer Technology Association (“CTA”),TM formerly the Consumer Electronics Association (“CEA”)[®], is the trade association representing the \$285 billion U.S. consumer technology industry. More than 2,200 companies – 80 percent are small businesses and startups; others are among the world’s best known brands – enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development, and the fostering of business and strategic relationships. CTA also owns and produces CES[®] – the world’s gathering place for all who thrive on the business of consumer technology. Profits from CES are reinvested into CTA’s industry services.

² See *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). CTA refers to ¶¶ 6-26 of the forgoing item as the “*Second Report and Order*,” to ¶¶ 27-32 as the “*Order on Reconsideration*,” and to ¶¶ 33-40 and Appendix D (“App. D”) of the item as the “*Notice*.”

³ See *Notice*, App. D (proposing to amend 47 C.F.R. § 79.103 by adding paragraph (e) as follows: “(e) *Access to closed captioning display settings*. Effective [insert date], apparatus subject to this section must ensure that consumers are able to readily access user display settings for closed captioning, if technically feasible, except that apparatus that use a picture screen of less than 13 inches in size must comply with this requirement only if doing so is achievable as defined in this section.”).

I. INTRODUCTION

Closed captioning is one of the success stories of U.S. accessibility efforts for people with hearing loss. Thanks to the combined efforts of the Commission, device manufacturers, consumer advocates, video programming distributors, and video programmers, closed captioning is now ubiquitous for broadcast television. Moreover, the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),⁴ which, as discussed below, CTA helped develop, expanded the availability of closed captioning to video programming distributed using Internet protocol and the myriad devices that can receive it – not only televisions, but set-top boxes, mobile handsets, tablets, PCs, and more. CTA has participated extensively in the Commission’s efforts to implement the CVAA, including the rulemakings regarding closed captioning and user interfaces.⁵

CTA member manufacturers have made dramatic progress towards increasing the accessibility of consumer technologies designed to play back video with sound over the last few years, consistent with the Commission’s rules adopted pursuant to the CVAA in the *IP Closed Captioning* proceeding⁶ and in preparation for the upcoming December 20, 2016 compliance

⁴ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA”); *see also* An Act to make technical corrections in the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act, Pub. L. No. 111-265, 124 Stat. 2795 (2010).

⁵ *See, e.g.*, Comments of CEA, MB Docket No. 11-154 (Oct. 18, 2011); Reply Comments of CEA, MB Docket No. 11-154 (Nov. 1, 2011); Comments of CEA, MB Docket No. 11-154 (Nov. 3, 2013); Reply Comments of CEA, MB Docket No. 11-154 (Dec. 4, 2013); Comments of CEA, MB Docket Nos. 12-107 & 12-108 (June 4, 2012); Comments of CEA, MB Docket No. 12-108 (July 15, 2013); Reply Comments of CEA, MB Docket No. 12-108 (Aug. 7, 2013); Comments of CEA, MB Docket Nos. 12-107 & 12-108 (Feb. 18, 2014); Reply Comments of CEA, MB Docket Nos. 12-107 & 12-108 (Mar. 20, 2014); *see also, e.g.*, Comments of CEA, CG Docket No. 10-213 et al. (Apr. 25, 2011); Reply Comments of CEA, CG Docket No. 10-213 et al. (May 23, 2011); Comments of CEA, CG Docket No. 10-213 et al. (Feb. 13, 2012); Comments of CEA, CG Docket No. 10-213 et al. (Mar. 14, 2012).

⁶ *See, e.g.*, *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of*

deadline for the new user interface rules.⁷ CTA members' efforts are consistent with the Commission's efforts in this area, by which it met its deadlines for implementing the user interface provisions of the CVAA.

CTA appreciates the Commission's desire to maintain the important progress the consumer technology industry has made toward a more accessible world with universal design. CTA proudly participates in one such effort – the Disability Advisory Committee – that informs the Commission of this progress.

The Commission should not adopt the additional accessibility requirement proposed in the *Notice* on the user display settings for closed captioning of apparatus subject to Section 79.103 of the rules (“closed captioning display settings”). Even if the circumstances were ripe for further government intervention, the Commission is precluded from imposing design mandates on closed captioning display settings. Such action is inconsistent with the Communications Act (the “Act”) and Congress's intent. In particular, the Television Decoder Circuitry Act (“TDCA”)⁸ as codified in Sections 303(u) and 330(b) of the Act⁹ does not provide a legal basis for imposing this requirement because it is intended only to address the accessibility of broadcast television receivers.

2010, Report and Order, 27 FCC Rcd 787 (2012) (“*First IP Closed Captioning Order*”); *id.*, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 8687 (2014).

⁷ See *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 and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (“*First User Interface Order*”).

⁸ Pub. L. No. 101-431, 104 Stat. 960 (1990).

⁹ 47 U.S.C. §§ 303(u), 330(b).

The Commission’s proposal also threatens to chill innovation, saddling the consumer technology industry with ill-defined mandates. Requiring industry to devote time and money to addressing the proposed new closed captioning mandate will necessarily divert resources that could otherwise be used to respond more directly to consumer needs, including continued improvements to accessibility for all consumers. If the Commission nevertheless elects to move forward as proposed in the *Notice*, the agency must provide for a sufficient transition period and waiver mechanism.

II. THE TDCA DOES NOT AUTHORIZE THE COMMISSION TO IMPOSE BROAD REQUIREMENTS ON USER CONTROL ACTIVATION MECHANISMS FOR CLOSED CAPTIONING DISPLAY SETTINGS

The TDCA, by its terms, provides no authority for the Commission to extend the user control activation requirements on closed captioning display settings. The TDCA refers specifically to the decoding of closed captions available on “apparatus designed to receive television pictures broadcast simultaneously with sound.”¹⁰ The broadcast television problems that Congress sought to address through the TDCA do not relate to closed captioning display settings. As illustrated by the Senate report on the TDCA, those captioning issues the TDCA was intended to address were limited to broadcast television receivers (*e.g.*, the cost of decoders; perceived stigma in the use of closed captioning; and consumer “intimidation due to both technology and difficulty in installing separate decoders”).¹¹ In addition, Section 330(b) of the Act, as added by the TDCA, directs the Commission to impose highly technical standards for decoder circuitry.¹² The statutory focus on, for example, “line 21 of the vertical blanking

¹⁰ TDCA § 3, 104 Stat. at 960-61.

¹¹ *See* S. Rep. 101-393 at 3.

¹² *See* TDCA § 4, 104 Stat. at 961 (directing the Commission to prescribe rules to “provide performance and display standards for such built-in decoder circuitry”).

interval” of the analog TV signal and specific related technical standards are further indicia of Congress’s focus on decoders for broadcast televisions.¹³

In the TDCA, Congress did not authorize the Commission to adopt any rules with respect to the accessibility of user interfaces for closed captioning display settings.¹⁴ The *Notice* points out that Section 330 states that “[a]s new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that *closed-captioning service* continues to be *available* to consumers.”¹⁵ However, this does not provide a legal basis for the Commission to create rules requiring closed captioning display settings to be “readily access[ible].”¹⁶ Making display settings “readily accessible,” as proposed in the *Notice*, is unrelated to ensuring that closed-captioning service is “available” as new video technology is introduced. In fact, by implementing the closed captioning provisions of the CVAA and adopting Section 79.103 of the rules in the *IP Closed Captioning* proceeding, the Commission already has ensured, consistent with the CVAA, that closed captioning will continue to be available to new video technologies (subject, of course, to the express limitations found in the CVAA).

Because of the difference between making closed-captioning service “available” under the TDCA and the proposal in the *Notice* to adopt a “readily accessible” rule for closed captioning display settings, the Commission has no authority under the TDCA to adopt the proposed rule. The Commission must interpret Congress’s directive in the TDCA to ensure that new video technologies preserve the availability of closed captioning consistent with the highly

¹³ *Id.*

¹⁴ *See National Public Radio v. FCC*, 254 F.3d 226, 230 (D.C. Cir. 2001) (“statutory language represents the clearest indication of Congressional intent”).

¹⁵ *Notice*, 30 FCC Rcd at 13933 ¶ 35 (citing 47 U.S.C. § 330(b)) (emphasis added).

¹⁶ *Id.*, 30 FCC Rcd at 13958 App. D.

technical, broadcast television-focused orientation of Section 330(b). Past Commission actions such as the *DTV Closed Captioning Order* narrowly applied the TDCA by promulgating “performance and display standards for such decoder circuitry” in digital televisions – far afield from the broad user interface-related requirements contemplated in the *Notice*.¹⁷

The CVAA, the most recent accessibility statute from Congress, governs the user interface issue for closed captioning display settings as well as other functions. CTA (then known as CEA) proudly helped shape the CVAA, which reflects Congress’s careful approach toward balancing the twin goals of accessibility and preserving technological innovation. CTA worked closely with Members of Congress and engaged with representatives of the accessibility community during the development and passage of the CVAA. Although CTA had concerns that initial versions of the legislation could harm, rather than benefit, consumers and innovation, CTA and its members continued to meet regularly with representatives from the Coalition of Organizations for Accessible Technology (“COAT”) to gain a better understanding of the issues. CTA further engaged and worked with all stakeholders to help craft final legislation that emphasized the twin goals of accessibility and preserving technology innovation. CTA’s contributions throughout the legislative process have had a meaningful result, as reflected in the new law.

Congress intended that the CVAA define the terms under which the Commission may impose accessible user interface rules through its new statutory language, adding Sections 303(aa) and (bb) to the Act¹⁸ that directly address user interfaces, not through a belated

¹⁷ See generally *Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order*, 15 FCC Rcd 16788 (2000) (“*DTV Closed Captioning Order*”).

¹⁸ 47 U.S.C. §§ 303(aa), (bb).

Commission reinterpretation of the TDCA. The CVAA set forth specific steps for the Commission to take with respect to accessibility rules for user interfaces, such as mandating formation of the Video Programming Accessibility Advisory Committee (“VPAAC”) and adopting rulemaking timelines. That the CVAA added new sections to the Communications Act to specifically address user interfaces indicates that Congress did not intend to change the existing meaning of Sections 303(u) and Section 330(b).¹⁹ Congress designed the CVAA to address new subject areas, such as user interfaces, not covered by the TDCA or other earlier legislation. In short, the Commission should not impose overbroad, uncertain, and burdensome requirements not contemplated by the statute and not within the parameters clearly established by Congress.

III. THE COMMISSION SHOULD NOT IMPOSE NEW DESIGN MANDATES ON MANUFACTURERS, WHO ARE ALREADY WORKING TO CONSOLIDATE ACCESSIBILITY USER INTERFACE FUNCTIONS WELL AHEAD OF THE DECEMBER 20, 2016 COMPLIANCE DEADLINE

Even if the Commission has the legal authority to adopt rules governing user control display mechanisms, in order to ensure the best user experience and promote manufacturer innovation, it should not impose design mandates related to access to close captioning display settings.

In the absence of direction from Congress, the Commission should not adopt the open-ended mandate proposed in the *Notice*. As a practical matter, the broad, undefined nature of the

¹⁹ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (“a specific policy embodied in a later federal statute should control [the interpreters’] construction of the earlier statute, even though it has not been expressly amended” (internal quotation marks omitted)); *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974) (when construing two statutes passed by Congress at different times, one should “not look merely to a particular clause in which general words may be used, but ... take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature” (internal quotation marks omitted)).

proposed rule creates uncertainty for industry that neither improves accessibility nor promotes innovation in the development of new products.²⁰ The Commission’s recent actions to require that closed captioning be activated through a mechanism that is reasonably comparable to a button, key, or icon²¹ are sufficient to fulfill the CVAA’s requirements.

The user interface requirements already going into effect later this year will greatly increase the accessibility of a broad array of user interfaces on navigation devices and digital apparatus. It is premature to impose new design mandates without fully examining the consumer technology landscape after the compliance date of the new rules.

IV. IF THE COMMISSION DECIDES TO ADOPT A RULE, IT MUST PROVIDE A REASONABLE IMPLEMENTATION DEADLINE AND OPPORTUNITY FOR WAIVER

Should the Commission move forward with the proposed rule, it must provide an adequate transition period for manufacturers. Manufacturers are working hard to implement several user interface-related regulations ahead of the December 20, 2016 compliance deadline. Similarly, in the wake of the *Second Report and Order*, manufacturers are expending significant resources to incorporate the just-adopted new usability, information, documentation, and training requirements in a compressed 13-month compliance period. Imposing new mandates to coincide with the current compliance timelines will be unduly burdensome.

²⁰ It would also be impermissible for the Commission to require compliance with a designated technical standard in light of the CVAA’s rejection of specific technical mandates for user interfaces and closed captioning. CVAA, 124 Stat. at 2774 (permitting an “alternative means of compliance” for entities to meet the user interface requirements for digital apparatus); *id.* at 124 Stat. at 2775 (permitting covered entities to meet the user interface requirements for navigation devices through “separate equipment or software”); *id.* (permitting covered entities “maximum flexibility in the selection of means for compliance” with requirements for activating closed captioning on navigation devices).

²¹ *First User Interface Order*, 28 FCC Rcd at 17380 ¶ 79; *Order on Reconsideration*, 30 FCC Rcd at 13929-30 ¶ 27.

Reasonable transition periods are consistent with past practice in the accessibility context for closed captioning and user interfaces.²² For example, the Commission correctly adopted a compliance phase-in period of three years after Federal Register publication of the final rules to implement all the new rules under Section 204 and 205. As CTA anticipated, manufacturers are using this transition period to implement the new regulatory requirements in a coherent, coordinated, and efficient manner.²³ Adopting a reasonable implementation period, such as three years, for compliance with any new rules will greatly simplify the development of accessible solutions for apparatus without significantly delaying the introduction of accessible devices.

The Commission should also allow covered entities to seek targeted exemptions from any new rule it adopts by affirming that it will freely grant waivers under its existing waiver standards,²⁴ especially regarding technical feasibility, and by interpreting the “achievable” standard consistent with its prior practice under the CVAA.²⁵ Such targeted exemptions would allow the Commission and manufacturers to engage in a dialogue to respond appropriately to specific technical and market conditions that may not be addressed by the overarching rule.

²² See, e.g., *First User Interface Order*, 28 FCC Rcd at 17399 ¶ 111 (adopting a compliance deadline three years after the publication of the order in the Federal Register); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*; Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14601-03 ¶¶ 106-11 (2011) (adopting a two-year phase-in for new accessibility requirements for advanced communication services); *DTV Closed Captioning Order*, 15 FCC Rcd at 16808 ¶ 58 (adopting an “approximately two year period” for manufacturers to comply with new technical requirements).

²³ Comments of CEA, MB 12-108, at 23-24 (July 15, 2013).

²⁴ 47 C.F.R. § 1.3; see also *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²⁵ See *First User Interface Order*, 28 FCC Rcd at 17379-80 ¶¶ 77-78.

V. CONCLUSION

CTA urges the Commission to adhere closely to the statutory framework as it seeks to ensure the accessibility of consumer technologies. CTA requests the Commission not to adopt the rule proposed in the *Notice*. If the Commission adopts such a rule, CTA urges it to provide a reasonable compliance period for industry as well as an adequate waiver mechanism.

Respectfully submitted,

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