

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)

**REPLY COMMENTS OF
THE CONSUMER TECHNOLOGY ASSOCIATION
F/K/A THE CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Technology Association (“CTA”) respectfully replies to comments filed on the Second Further Notice of Proposed Rulemaking (“*Notice*”)¹ in the above-captioned proceeding. The record in this proceeding demonstrates that the Commission should not adopt additional closed captioning rules as contemplated in the *Notice*.

I. INTRODUCTION

With the introduction of new user interfaces consistent with the Commission’s rules to meet the December 20, 2016 compliance deadline – after years of designing, coding, and cross-industry collaboration – more individuals will have the ability to activate² and utilize closed captioning than ever before. At the same time, manufacturers are introducing products that make television viewing more accessible in innovative ways for individuals who are deaf or hard of

¹ 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 ¶¶ 33-40 and Appendix D (“App. D”) of the item as the “*Notice*,” and ¶¶ 27-32 as the “*Order on Reconsideration*.”

All references to “Comments” in this reply are to comments filed in MB Docket No. 12-108 on or about February 24, 2016.

² See 47 C.F.R. § 79.109.

hearing. Just a few weeks ago, two televisions won the 2016 CES Innovation Awards for Accessible Tech.³

The Commission properly remains vigilant with respect to closed captioning availability and seeks to maintain the important progress the consumer technology industry has made toward a more accessible world. However, the Commission cannot exceed its statutory authority by imposing user interface requirements for user display settings for closed captioning of apparatus subject to Section 79.103 of the rules (“closed captioning display settings”). In particular, the record shows that the Television Decoder Circuitry Act (“TDCA”),⁴ as codified in Sections 303(u) and 330(b) of the Communications Act (the “Act”),⁵ provides no basis for imposing this requirement.

If the Commission nevertheless elects to move forward with regulations, it should not impose design mandates like the “first level of a menu” rule proposed by the Advocacy Groups.⁶ User interface design represents a series of engineering and design tradeoffs. Any rule must provide flexibility in order to acknowledge the design challenges that manufacturers and their programming partners face in implementation. The “first level of a menu” rule would be an unwarranted intrusion into industry design processes. The Advocacy Groups’ lack of appreciation of the technical challenges associated with implementing a “first level of a menu” rule illustrates the folly of attempting to regulate in this area.

³ See Consumer Technology Association, CES Innovation Awards, <http://cesweb.org/innovation> (last visited Mar. 4, 2016) (recognizing the Samsung UN55KU7500 Smart UHD TV with Accessibility Features and Samsung UN78KS8500 Smart UHD TV with Accessibility Features).

⁴ Pub. L. No. 101-431, 104 Stat. 960 (1990).

⁵ 47 U.S.C. §§ 303(u), 330(b).

⁶ See Comments of Consumer Groups and RERC at 6-9 (“Advocacy Groups Comments”) (filed by Telecommunications for the Deaf and Hard of Hearing, Inc.).

If the Commission adopts rules, the agency must provide for a sufficient transition period and a waiver mechanism. A reasonable transition period is needed to provide industry with a reasonable chance of implanting any rule successfully. The extremely short period, ending December 20, 2016,⁷ envisioned by the Advocacy Groups⁸ is impractical and unprecedented for the Commission’s implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).⁹ In the same vein, targeted exemptions, such as those routinely implemented under the CVAA, for achievability are crucial to innovation and experimentation so that manufacturers may develop user interfaces that can best serve consumers who are deaf or hard-of-hearing as well as others.

II. SECTIONS 303(U) AND 330(B) OF THE ACT DO NOT AUTHORIZE THE COMMISSION TO REGULATE CLOSED CAPTIONING DISPLAY SETTINGS

Contrary to the position of the Advocacy Groups,¹⁰ imposing regulations on closed caption display settings ignores the plain language of the TDCA, misconstrues past Commission interpretations, and disregards Congress’s intent as embodied in the CVAA. The record demonstrates that the plain language of the TDCA only provides the Commission limited authority to impose technical rules for decoder circuitry, not the user interface requirements proposed in the *Notice*. Given the limited scope of the TDCA, the Commission must interpret

⁷ December 20, 2016, is the end of the compliance period for the user interface rules already adopted by the Commission. *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 *See* Advocacy Groups Comments at 12.

⁹ Pub. L. No. 111-260, 124 Stat. 2751 (2010); *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).

¹⁰ *See* Advocacy Groups Comments at 3-5.

Congress’s directive to ensure that new video technologies preserve the availability of closed captioning consistent with the highly technical, broadcast television focus of Section 330(b).¹¹

The Advocacy Groups acknowledge that Congress adopted the TDCA to address technical barriers to the availability of closed captioning on television.¹² Similarly, other commenters explain that the TDCA does not extend to the design settings of successfully decoded and displayed closed captioning of video programming viewed on the many different types of apparatus available today. With respect to the “new video technology” sentence in the TDCA upon which the *Notice* relies,¹³ the National Cable & Telecommunications Association aptly observes that “[a] review of the legislative history shows that this particular sentence was not intended to provide additional authority to the Commission, but instead reflects Congress’ [sic] desire to ensure ... *particular technology requirements* ... keep pace with future technology changes.”¹⁴ Past Commission actions also demonstrate that the TDCA addresses “issues other than regulating user interface design as to how to access ... enhanced caption display settings.”¹⁵

¹¹ See Comments of the Consumer Technology Association f/k/a the Consumer Electronics Association at 4-7 (“CTA Comments”); Comments of the National Cable & Telecommunications Association at 3-4 (“NCTA Comments”); Comments of AT&T at 2-4 (“AT&T Comments”) (noting that the distinction “between closed captioning availability and settings” is “determinative”).

¹² See Advocacy Groups Comments at 3 (“Practical accessibility was a driving factor behind the drafting of the TDCA, as the law sought to remove technical barriers...”); *id.* at 10 (observing that the TDCA is meant to “ensure ‘equal access to the *television medium*’”) (quoting the TDCA) (emphasis added).

¹³ *Notice*, 30 FCC Rcd at 13933 ¶ 35 (citing 47 U.S.C. § 330(b)).

¹⁴ NCTA Comments at 4 (emphasis added) (citation omitted).

¹⁵ *Id.* at 3; see also CTA Comments at 6 (observing that “[p]ast Commission actions ... narrowly applied the TDCA ... far afield from the broad user interface-related requirements contemplated in the *Notice*”).

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.¹⁶

Therefore, the CVAA could not have “ratified” an expansive interpretation of the TDCA, as implausibly suggested by the Advocacy Groups.¹⁷ Rather, as CTA has shown and others agree, the CVAA governs Commission authority over user interface issues, for closed captioning as well as other functions. Specifically, through the CVAA, Congress made surgical alterations to the TDCA unrelated to user interfaces, while choosing to add new sections to the Communications Act to address user interfaces.¹⁸ With respect to the closed captioning aspects of user interfaces, the CVAA created only limited Commission authority for rules governing activation, and even there provided for flexible implementation.¹⁹ Congress intended that the CVAA define the terms under which the Commission may impose accessible user interface rules through its new statutory language that directly addresses user interfaces, not through a belated Commission reinterpretation of the TDCA.

III. THE COMMISSION SHOULD NOT IMPOSE NEW DESIGN MANDATES ON MANUFACTURERS, ESPECIALLY A “FIRST LEVEL OF A MENU” RULE

CTA and others demonstrated in initial comments that it would be unwise for the Commission to regulate closed captioning display settings, assuming *arguendo* that it had the

¹⁶ By 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. See *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 (2012) (“*First IP Closed Captioning Order*”); *id.*, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 8687 (2014).

¹⁷ See Advocacy Groups Comments at 5.

¹⁸ See CTA Comments at 6-7; AT&T Comments at 3-4; NCTA Comments at 4-5.

¹⁹ See 47 C.F.R. §§ 79.107-79.109.

requisite authority.²⁰ To be workable, any rule must acknowledge the design challenges that manufacturers and their programming partners face in implementation, and this is a particularly difficult area in which to do so. User interface design combines interactive design, visual design, and information architecture to anticipate user needs and ensure that the interface is “easy to access, understand, and use.”²¹ Innovative companies are experimenting with design, which necessarily involves tradeoffs between the information and choices exposed at different menu levels. When designing user interfaces, manufacturers purposefully examine and balance the needs of their consumers while complying with regulatory requirements.

As CTA has discussed, the “readily accessible” rule proposed in the *Notice*²² creates uncertainty for industry that neither improves accessibility nor promotes innovation in the development of new products.²³ The Commission’s recent actions to require that closed captioning be activated through a mechanism that is reasonably comparable to a button, key, or icon²⁴ fulfill the CVAA’s requirements.

At the other extreme, and even more problematic, the “first level of a menu” rule proposed by the Advocacy Groups²⁵ attempts to micromanage the design process to a greater

²⁰ See CTA Comments at 7-8; NCTA Comments at 5-6.

²¹ Usability.gov, What & Why of Usability, User Interface Design Basics, <http://www.usability.gov/what-and-why/user-interface-design.html> (last visited Mar. 2, 2016).

²² See *Notice*, 30 FCC Rcd at 13958 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.”).

²³ See CTA Comments at 7-8.

²⁴ *First User Interface Order*, 28 FCC Rcd at 17380 ¶ 79; *Order on Reconsideration*, 30 FCC Rcd at 13929-30 ¶ 27.

²⁵ See Advocacy Groups Comments at 6.

degree than any other rule promulgated by the Commission under the CVAA. If adopted, that rule would be an unwarranted intrusion into industry design processes.

The Advocacy Groups' claim that implementing a "first level of a menu" rule is a "small" software modification²⁶ is entirely unfounded and contrary to industry experience. This claim ignores the fact that changes to the user interface are part of an overall development process that balances competing usability priorities for all users. As other parties note, adjusting the level or location of a settings menu is a significant undertaking involving design, development, testing, and manufacture involving coordination among "multiple internal and external design and engineering teams."²⁷

If the Commission does impose a display settings requirement for closed captioning, it should reject a "first level of a menu" rule, which could only ossify design evolution.²⁸ Such a technical mandate would also be inconsistent with the CVAA's rejection of specific technical mandates for user interfaces and closed captioning.²⁹ With covered entities in the midst of implementing the existing user interface requirements, including the rule governing closed captioning activation, AT&T is correct that imposing additional functions on the existing requirements would be counterproductive.³⁰ The better course is to assess the effect of the extensive current rules before even considering imposing more rules.³¹

²⁶ *See id.* at 5, 11.

²⁷ Comments of the Telecommunications Industry Association at 2 ("TIA Comments"); *see also* NCTA Comments at 6.

²⁸ *See* NCTA Comments at 6.

²⁹ *See* CTA Comments at 8 n.20.

³⁰ *See* AT&T Comments at 5.

³¹ *See* TIA Comments at 1.

IV. BECAUSE OF THE CONSIDERABLE EFFORT USER INTERFACE CHANGES ENTAIL, IF THE COMMISSION DECIDES TO ADOPT A RULE, IT MUST PROVIDE A REASONABLE IMPLEMENTATION DEADLINE AND TARGETED EXEMPTIONS AS WITH OTHER ACCESSIBILITY RULES

Despite the Advocacy Groups' position to the contrary, the record clearly demonstrates the need for a reasonable transition period for industry to comply with any new requirements.³² It would be impractical and punitive to tie any compliance period to the existing December 20, 2016 date, as the Advocacy Groups propose.³³ This proposal is based on those Groups' failure to acknowledge the complexity of implementing rules regarding closed captioning display settings. The Commission has not adopted such a short compliance period for any comparable new rule under the CVAA,³⁴ and it would seem especially unwarranted to do so for a rule that (depending on what is adopted) could be either quite vague or could require significant development work. Moreover, consistent with the Commission's "expect[ation]," manufacturers are "tak[ing] accessibility into consideration as early as possible during the design process."³⁵ Thus, a rule change this late into the manufacturing process could force manufacturers to undo design work completed in anticipation of the December 2016 deadline. A reasonable interval, such as three years, for compliance with any new rules will simplify the development of accessible solutions for apparatus.

³² See CTA Comments at 8-9; TIA Comments at 2; AT&T Comments at 5-6; NCTA Comments at 6-7.

³³ See Advocacy Groups Comments at 12.

³⁴ 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, 14601-04 ¶¶ 106-11 (2011) (adopting a two-year phase-in for new accessibility requirements for advanced communication services).

³⁵ *First User Interface Order*, 28 FCC Rcd at 17400-01 ¶ 112.

Acknowledging the dynamic nature of the consumer technology industry, and consistent with Section 1.3 of its rules,³⁶ the Commission also should preserve safety valves such as waivers, especially for technical feasibility. Similarly, the Commission should maintain its use of the achievability standard consistent with its prior practice under the CVAA.³⁷ Such narrowly tailored exemptions are consistent with congressional intent and past Commission practice.³⁸ As a practical matter, the Telecommunications Industry Association correctly notes that “[i]mposing 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 manufacturers.³⁹

³⁶ 47 C.F.R. § 1.3.

³⁷ See *First User Interface Order*, 28 FCC Rcd at 17379-80 ¶¶ 77-78.

³⁸ See CTA Comments at 9; TIA Comments at 2.

³⁹ TIA Comments at 2.

V. CONCLUSION

CTA urges the Commission to heed the record, which demonstrates that the Commission lacks jurisdiction to adopt the proposed rule or the rule proposed by the Advocacy Groups, which, if adopted, would hinder innovation. If the Commission adopts a requirement on closed captioning display settings, the agency should provide a reasonable compliance period as well as implementation flexibility through narrowly tailored exemptions.

Respectfully submitted,
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