

The record also demonstrates that it would be unwise for the Commission to regulate the accessibility of closed captioning display settings, assuming the authority existed, because it would destroy a manufacturer's design flexibility in making user interfaces useful to all consumers. More specifically, a near-term requirement that display settings be in the "first level of a menu" would intrude upon a manufacturer's design process at a time that interface changes mandated by Section 205 of the CVAA are being made.

Finally, if the Commission disregards the authority and design issues and moves forward with rules, adequate implementation time is essential. Contrary to the assertions of one commenter, complying with the proposed rules would require more than a "small software modification" that could be accomplished by December 20, 2016; the implementation deadline should be no less than two years after that date.

II. DISCUSSION

A. The TDCA is specific in its scope and does not authorize the Commission to regulate the accessibility of display settings.

Congress passed the TDCA in 1990, requiring that apparatus "designed to receive television pictures broadcast simultaneously with sound" be equipped with built-in decoder circuitry to display closed captioning.⁴ The regulatory authority given by Congress to the Commission was very limited, specifically to adopt performance and display standards for such built-in decoder circuitry.⁵ Thus, the thrust of the TDCA is to make closed captioning available. AT&T agrees

⁴ TDCA §3, 104 Stat. at 960-61 (as codified at 47 U.S.C. § 303 (u), Note).

⁵ The Commission was instructed to enact specific rules requiring that apparatus "to be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and display specifications set forth in the Public Broadcasting System engineering report..." See TDCA §§ 3 (as codified at 47 U.S.C. §303(u)), 4(a) (as codified at 47 U.S.C. § 330(b)).

with the National Cable & Telecommunications Association (“NTCA”) and the Consumer Technology Association (“CTA”) that this limited grant of authority cannot and should not be used as authority to require that display settings for closed captioning meet unspecified standards that they are “readily accessible.”⁶

Congress’ intent in the TDCA was made even clearer 20 years later with the passage of the CVAA. The CVAA provides a comprehensive framework for accessibility and specifically addresses user interfaces for closed captioning and other functions. In doing so, it treats user interfaces as a new regulatory area and, instructively for the current proceeding, did not revise any provisions of the TDCA in doing so. AT&T believes that Congress knew that the TDCA did not apply to user interfaces such as display settings and intended the CVAA to fill that void where it deemed necessary. As the CVAA does not regulate the accessibility of closed captioning display settings, the Commission should not look for, and will not find, authority in the TDCA.

Joint comments filed by several consumer groups argue that the TDCA confers authority because the Commission is instructed to take action to ensure that closed captioning service (and video description service) *continues to be available to consumers* as new technology is developed.⁷ The phrase “*continues to be available*” is the key. Nothing has changed regarding the availability of closed captioning since the implementation of the TDCA; closed captioning will continue to be

⁶ See NTCA Comments at 2-4, CTA Comments at 4-6.

⁷ See Comments of Consumer Groups and RERC in Response to Second FNPRM at 3 (emphasis added). The Consumer Groups include Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Hearing Loss Association of America, and Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University.

available without the proposed rules. Accordingly, the TDCA should not be stretched to cover the accessibility of user display settings, something that was clearly not intended by Congress.

B. The proposed rules would limit manufacturer flexibility at a time when they are attempting to comply with user interface regulations.

Even if the Commission had the authority, AT&T agrees with the NTCA that “there are real-world challenges” with implementing the proposed requirements⁸ and with the CTA that the proposed rule “creates uncertainty for industry that neither improves accessibility nor promotes innovation in the development of new products.”⁹ Moreover, the proposal by consumer groups that display settings be placed at the “first level of a menu” will rob manufacturers of the flexibility necessary to design an interface that is innovative and beneficial to all consumers.

There are significant limitations on the first level of a menu. Often only six to eight items can be displayed in a list on a single screen without scrolling. That makes user interface design a tradeoff between a flat design, such as one big menu, and a structured design with sensible sub-menus. Requiring the closed captioning display settings to be on the first level removes the flexibility to optimize within this tradeoff and, if more regulatory mandated items are added in the future based upon the precedent of the proposed rule, the issue would be compounded.

The trade associations representing manufacturers are unanimous in their comments that their members are working hard to implement existing mandates under the CVAA.¹⁰ This work has resulted in significant changes that have made enhanced captioning settings easier to locate.¹¹

⁸ See NTCA Comments at 6.

⁹ See CTA Comments at 8.

¹⁰ See Telecommunications Industry Association Comments at 1; CTA Comments at 7-8; NCTA Comments at 5.

¹¹ See NCTA Comments at 5.

AT&T urges the Commission to allow manufacturers the flexibility to continue this innovative work for the benefit of all consumers.

C. Reasonable implementation time is necessary.

If the Commission adopts the proposed rule, it should reject the view of the Consumer Groups that including user display settings in the first level of a menu would require only a “small software modification” and it would therefore be appropriate for the compliance deadline to be the same as the December 20, 2016 deadline for complying with existing mandates.¹² As previously stated, designing a menu, especially a design to move functions to the first level of a menu, requires careful planning that could result in other functions being moved elsewhere. Additionally, it could interfere with efforts to add a closed captioning activation mechanism and aural guides to apparatus and navigation devices currently underway and mandated for equipment made after December 20, 2016.

¹² See Consumer Group Comments at 12.

The Consumer Groups' proposal is unreasonable. Any compliance deadline should not be prior to December 20, 2018 or two years after an order is published, whichever is later.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry E. Jones". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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