



The comments show that Congress' charge to the Commission in the TDCA was narrow. As AT&T explains, the TDCA "focuses on decoder circuitry for broadcast televisions, not user interfaces relating to display settings for closed captioning."<sup>4</sup> CTA agrees, adding that in the TDCA Congress intended to address such "broadcast television problems" as the need to obtain and install a separate captioning decoder.<sup>5</sup> TDI provides no evidence that Congress had any intent to regulate access to enhanced captioning display settings.

Nor does the TDCA provide the "broad authority" that TDI describes.<sup>6</sup> TDI relies heavily on statutory language pertaining to measures the Commission is authorized to take to ensure that closed captioning service continues to be available in the face of "new video technology."<sup>7</sup> But commenters explain why reliance on that provision is misplaced. Indeed, "[m]aking display settings 'readily accessible' . . . is unrelated to ensuring that closed-captioning service is 'available' as new video technology is introduced."<sup>8</sup> Moreover, as AT&T points out, new video technologies "have introduced no impediments to the availability of closed captioning."<sup>9</sup> The Commission must narrowly interpret the "new video technology" passage "consistent with the highly technical, broadcast television-focused orientation" of the TDCA.<sup>10</sup>

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<sup>4</sup> AT&T Comments at 1-2; *see also* Consumer Tech. Ass'n ("CTA") Comments at 3 (noting that the TDCA "is intended only to address the accessibility of broadcast television receivers"); NCTA Comments at 3 (explaining that the TDCA requires certain apparatus to include built-in decoder circuitry and "assigned specific, limited regulatory tasks to the Commission").

<sup>5</sup> CTA Comments at 4.

<sup>6</sup> Telecomm. for the Deaf & Hard of Hearing *et al.* ("TDI") Comments at 3.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> CTA Comments at 5.

<sup>9</sup> AT&T Comments at 3. AT&T points out that, even if the Commission "could overcome the 'availability' scope limitation [of the TDCA], it has not established a record as to what 'new technologies' have developed that would warrant the imposition of rules regulating display settings." *Id.*

<sup>10</sup> CTA Comments at 5-6; *see also* NCTA Comments at 4. Adoption of regulations that would apply "uniformly to the full range of devices on which video programming is viewed" as TDI proposes would reach far beyond the Commission's authority. *See* TDI Comments at 10-11.

Likewise, commenters show that “recent statutes related to accessibility illustrate that Congress did not believe the TDCA conferred authority to the Commission over the accessibility of display settings.”<sup>11</sup> In particular, the CVAA – not “a belated Commission reinterpretation of the TDCA” – specifies the contours of any regulation of user interfaces for accessibility.<sup>12</sup> And, as the record in this proceeding makes abundantly clear, the CVAA authorized the Commission to regulate only *activation* of closed captioning, not access to enhanced captioning display settings.<sup>13</sup>

Furthermore, there is simply “no evidence that additional accessibility rules are necessary or that their implementation would outweigh the potentially significant cost of compliance.”<sup>14</sup> Any new requirement risks serious negative consequences, including “impair[ing] flexibility” and potentially delaying or even “derail[ing] progress of manufacturers and MVPDs toward making television and video more accessible, including user interface improvements mandated for later this year.”<sup>15</sup> Additional mandates would “necessarily divert resources that could otherwise be used to respond more directly to consumer needs, including continued improvements to accessibility for all consumers.”<sup>16</sup>

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<sup>11</sup> AT&T Comments at 3; *see also* NCTA Comments at 4.

<sup>12</sup> CTA Comments at 6-7.

<sup>13</sup> *See* AT&T Comments at 3-4; CTA Comments at 7-8; NCTA Comments at 2-3, 4-5. In any event, the TDCA does not authorize Commission regulation of MVPDs: the TDCA “regulates the availability of closed captioning on ‘apparatus,’ a term that the Commission has consistently interpreted in other accessibility statutes, and even in this docket, as imposing responsibilities on manufacturer, not distributors.” AT&T Comments at 4. Although TDI asserts that “both manufacturers and MVPDs should share responsibility” for further mandates, comments filed by TDI cite to no authority for an MVPD requirement. TDI Comments at 11.

<sup>14</sup> Telecomm. Indus. Ass’n (“TIA”) Comments at 1. Problematically, the “broad, undefined nature of the proposed rule creates uncertainty for industry that neither improves accessibility nor promotes innovation in the development of new products.” CTA Comments at 7-8.

<sup>15</sup> AT&T Comments at 2.

<sup>16</sup> CTA Comments at 4.

Despite TDI's unsupported assertions to the contrary, any new Commission requirement in this area would require much more than a "small software modification."<sup>17</sup> As TIA explains:

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.<sup>18</sup>

Thus, the record demonstrates that if it goes forward, it would be unreasonable and arbitrary to expect to sync up any new requirement with the 2016 deadline announced three years ago. As commenters show, the Commission must consider at least a two year compliance window for any new mandates.<sup>19</sup> In addition, the Commission should allow covered entities to seek compliance waivers or exceptions if they can demonstrate that implementation of the accessibility requirements would be technically infeasible or unduly burdensome.<sup>20</sup>

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<sup>17</sup> TDI Comments at 5, 11-12.

<sup>18</sup> TIA Comments at 2.

<sup>19</sup> *See id.* at 3 (advocating for "at least a two year compliance window, consistent with previous Commission decisions requiring substantial device redesign efforts"); CTA Comments at 9 (seeking a three year compliance period); AT&T Comments at 5-6 (recommending "a minimum compliance date of two years from [] December 20, 2016 or from the effective date of an order, whichever is later"); NCTA Comments at 6-7 & n.21 (suggesting that covered entities receive at least two years to comply with any new requirement).

<sup>20</sup> *See* TIA Comments at 2-3 ("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."); CTA Comments at 9 ("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.").

**CONCLUSION**

The record amply demonstrates that the Commission should not adopt further requirements for enhanced captioning display settings.

Respectfully submitted,

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