

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Closed Captioning of Internet Protocol-Delivered)
Video Programming: Implementation of the Twenty-) MB Docket No. 11-154
First Century Communications and Video)
Accessibility Act of 2010)

To: The Commission

**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

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SUMMARY

The record in response to the *NPRM* demonstrates that industry, including CEA and its member companies, is committed to working with the Commission and the deaf and hard of hearing community to increase the accessibility of video programming through IP captioning.

A phase-in period of at least 24 months is essential for apparatus manufacturers to comply with the new IP captioning requirements. Such a phase-in is consistent with Commission precedent and is essential in order for apparatus manufacturers to take the IP captioning requirements into consideration during the initial design phase of new products.

The Commission should adopt the SMPTE-TT standard (i) as a “safe harbor” interchange standard and (ii) in the case of consumer video players, as a “safe harbor” delivery standard. Adopting SMPTE-TT as a safe harbor, to the extent proposed in CEA’s initial comments, is a reasonable middle ground that balances flexibility and certainty.

The Commission should acknowledge the statutory framework of Section 303(u) of the Act, as amended by Section 203(a) of the CVAA, and codify it in the final rules. Section 303(u) applies only when “technically feasible” and only for apparatus “designed to” receive or playback video programming that is “transmitted simultaneously with sound.” CEA urges the Commission to reject the suggestion that it no longer consider screen size in determining which apparatus are required to include captioning functionality. Similarly, the Commission should reject the proposal to require all devices capable of playing back video to accommodate the full set of captioning adjustments and configurations in the VPAAC Report. For waiver purposes, the Commission should make clear that determining the “essential utility” of covered apparatus is based on one of the multiple purposes for which the device was designed.

The final rules should expressly recognize that the requirements of Section 303(z), as added by Section 203(b) of the CVAA, only apply when compliance is “achievable” and the apparatus is “designed to” record video programming “transmitted simultaneously with sound.”

Apparatus manufacturers should only be responsible for the compliance of their products’ principal means of viewing video programming at the time of sale. Consistent with amended Section 303(u), the Commission’s rules should reflect that not every application capable of viewing video programming that is provided with a covered apparatus must meet that section’s captioning requirements.

Any suggestion that the Commission extend the IP captioning complaint process to address allegations of an apparatus manufacturer’s non-compliance is not supported by the record or by Commission precedent with respect to captioning compliance.

The Commission should reject the suggestion that all interconnection standards and all equipment must implement the pass-through of closed captions. This claim is unsupported by the statute or the record.

The Commission should define “display-only video monitors” as any video display device that is not capable of decoding a compressed video signal and is only capable of displaying an uncompressed or “baseband” video signal.

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The Consumer Electronics Association (“CEA”) hereby submits these reply comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) issued in the above-captioned proceeding regarding the closed captioning of Internet protocol-delivered video programming (“IP captioning”).¹

I. INTRODUCTION

The record in response to the *NPRM* demonstrates that industry, including CEA and its member companies, is committed to working with the Commission and the deaf and hard of hearing community to increase the accessibility of video programming through IP captioning.² This commitment also was evident in the extensive and thoughtful work of industry and other

¹ *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Notice of Proposed Rulemaking, FCC 11-138 (rel. Sept. 19, 2011) (“*NPRM*”).

² See, e.g., CEA at 2; CTIA-The Wireless Association at 1 (“CTIA”); National Association of Broadcasters at 1 (“NAB”); Telecommunications Industry Association at 3 (“TIA”); Motion Picture Association of America, Inc. at 1 (“MPAA”); TechAmerica at 1; Digital Media Association at 3; Entertainment Software Association at 1 (“ESA”); Verizon and Verizon Wireless at 1; DirecTV at 2; Microsoft at 1; Google at 1-2. In these reply comments, all comments filed on or about October 18, 2011, in this proceeding are short-cited by party name.

stakeholder representatives in producing the first report of the Video Programming Accessibility Advisory Committee (“VPAAC”),³ as mandated by the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).⁴

Consistent with CEA’s initial comments, the record shows that careful implementation of the CVAA’s IP captioning provisions is needed to ensure that industry has (i) the continued flexibility to innovate and (ii) certainty regarding the scope of its obligations.⁵ To meet its statutory deadline of January 12, 2012,⁶ efficiently and fairly, the Commission should focus its attention on the specific requirements of the CVAA and refrain from adopting any proposals that would exceed the authority provided by the CVAA.

II. A PHASE-IN PERIOD OF AT LEAST 24 MONTHS IS NEEDED FOR THE EFFICIENT AND ORDERLY IMPLEMENTATION OF THE SECTION 203 CAPTIONING REQUIREMENTS.

Commenters largely support a phase-in period of at least 24 months for apparatus manufacturers to comply with the new IP captioning requirements.⁷ Such a phase-in will enable apparatus manufacturers to take the IP captioning requirements into consideration during the

³ First Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: Closed Captioning of Video Programming Delivered Using Internet Protocol, July 13, 2011, *available at* http://transition.fcc.gov/cgb/dro/VPAAC/First_VPAAC_Report_to_the_FCC_7-11-11_FINAL.pdf (“VPAAC Report”).

⁴ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of Title 47 of the United States Code). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on Oct. 8, 2010, to make technical corrections to the CVAA and the CVAA’s amendments to the Communications Act of 1934.

⁵ *See, e.g.*, NAB at 3; TechAmerica at 1-2; Digital Media Association at 7; Microsoft at 16.

⁶ *NPRM* ¶ 3.

⁷ *See, e.g.*, Verizon and Verizon Wireless at 6; DirectTV at 13; Microsoft at 18; ESA at 2.

initial design phase of new products, thereby establishing the most efficient and practical incorporation of the Commission’s final requirements without unduly increasing design, testing, or production costs or delaying new product releases.⁸ A phase-in period of at least 24 months is also consistent with and supported by Commission precedent implementing similar technical requirements.⁹ Any assertion to the contrary ignores the reality of the product development cycle for the vast majority of covered apparatus.¹⁰

III. CEA’S PROPOSED SAFE HARBOR BASED ON SMPTE-TT BEST BALANCES THE NEED FOR INDUSTRY FLEXIBILITY AND CERTAINTY.

As proposed in CEA’s initial comments,¹¹ the Commission should adopt the SMPTE-TT standard (i) as a “safe harbor” interchange standard and (ii) in the case of consumer video players (Use Case #1),¹² as a “safe harbor” delivery standard. Commenters are split between urging the Commission to adopt no standard¹³ and urging the Commission to mandate the use of SMPTE-

⁸ See, e.g., *Closed Captioning Requirements for Digital Television Receivers*, Report and Order, 15 FCC Rcd 16788, 16808 ¶ 57 (2000) (“It would be counterproductive to our goal of ensuring accessibility to closed captioning if our compliance deadline did not allow for a thorough product design and testing period.”).

⁹ See *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*, CG Docket No. 10-213, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, ¶¶ 107-110 (rel. Oct. 7, 2011) (“*ACS Order*”) (providing a 24-month phase-in period for compliance of ACS devices); *id.* ¶ 110 and accompanying chart (setting forth Commission precedent consistent with a two-year phase of similar complex technical requirements).

¹⁰ See Consumer Groups at 50.

¹¹ CEA at 6-7.

¹² Under “Use Case #1,” “content is sent directly, with a standardized delivery format, from the content provider (or through an intermediary service) to an Internet-connected consumer device that includes standardized video-player functionality (decoding and rendering of audio, video and captions)” VPAAC Report at 18.

¹³ See, e.g., AT&T at 4-5; Google at 4; Consumer Groups at 31; Reply Comments of Coalition of Organizations for Accessible Technology (“COAT”), MB Docket No. 11-154, at 2 (filed Oct. 26, 2011).

TT.¹⁴ Adopting SMPTE-TT as a safe harbor is a reasonable middle ground that balances flexibility and certainty.¹⁵

As a safe harbor, SMPTE-TT would ensure consistency and transparency for entities seeking compliance. Covered apparatus cannot be expected to support each and every possible captioning standard that may be used to transmit IP captioning information. Moreover, the adoption of SMPTE-TT as a safe harbor also addresses generalized concerns regarding the use of proprietary standards.¹⁶ In particular, SMPTE-TT is an open standard,¹⁷ and CEA’s proposal for adopting it as a safe harbor is carefully crafted to afford industry flexibility in following it.

IV. THE COMMISSION SHOULD HEW CLOSELY TO THE STATUTORY FRAMEWORK AS IT IMPLEMENTS SECTION 203 OF THE CVAA.

A. The Final Rules Applicable to Receiving and Playback Apparatus Should Expressly Incorporate the Limitations Set Forth in Section 203(a).

The Commission should acknowledge the statutory framework of Section 303(u) of the Communications Act of 1934 (the “Act”), as amended by Section 203(a) of the CVAA, and codify it in the final rules. Section 303(u) applies only when “technically feasible” and only for apparatus “designed to” receive or playback video programming that is “transmitted simultaneously with sound.”¹⁸ As explained in CEA’s initial comments,¹⁹ the Commission’s

¹⁴ See, e.g., Rovi at 6 (“SMPTE-TT should be the required interchange format for IP-delivered content.”); Starz at 4-5; WGBH at 3.

¹⁵ See, e.g., Digital Media Association at 7 (urging the Commission to adopt SMPTE-TT as a “safe harbor”); Microsoft at 17 (SMPTE-TT “is one standard that would qualify as a safe harbor.”); see also NCTA at 12 (The Commission “should find that use of the SMPTE TT format facilitates and satisfies any online captioning obligation.”).

¹⁶ See Google at 2-6.

¹⁷ See, e.g., WGBH at 2; Microsoft at 17; MPAA at 10.

¹⁸ 47 U.S.C. § 303(u)(1).

¹⁹ See CEA at 10-14.

final rules should expressly recognize and incorporate each of these limitations. The captioning requirements should only apply where “technically feasible” and only to apparatus “designed to receive or playback video programming transmitted” by wire or radio.

For instance, as a matter of statutory construction,²⁰ the Commission should give meaning to the limiting modifier “transmitted” in amended Section 303(u)²¹ and exclude fixed-media playback devices (*e.g.*, DVD and Blu-ray players) and other similar devices from the closed captioning requirements. Such devices are outside the scope of the statute because they do not receive or playback video programming “transmitted” over wire or radio.²²

In addition, CEA urges the Commission to reject the suggestion that the Commission no longer consider screen size in determining which apparatus are required to include captioning functionality.²³ That claim is contrary to the plain language of amended Section 303(u). For apparatus that use a picture screen that is less than 13 inches in size, Section 303(u) requires that such apparatus meet the captioning requirements *only if achievable*.²⁴ The final rules must distinguish between apparatus with a screen size of 13 inches or more and apparatus with screen

²⁰ *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001) (“It is our duty to give effect, if possible, to every clause and word of a statute. We are thus reluctant to treat statutory terms as surplusage in any setting.” (internal quotations and citations omitted)).

²¹ *See* 47 U.S.C. § 303(u)(1); *see also* Rovi at 11 (“Apparatus covered by the regulation should be limited to devices that receive or play back programming *which is transmitted*.” (emphasis added)).

²² The CVAA does not provide the Commission with the authority to regulate apparatus that do not receive any transmission through wire or radio. *See* CVAA § 203. Nor can the Commission properly exercise ancillary jurisdiction to cover such apparatus. *See, e.g., Am. Library Ass’n v. FCC*, 406 F.3d 689, 703-705 (D.C. Cir. 2005) (discussing the Commission’s lack of ancillary jurisdiction to regulate consumer electronic devices when those devices are not engaged in the process of radio or wire transmission).

²³ *See* Consumer Groups at 46.

²⁴ 47 U.S.C. § 303(u)(2)(A) (emphasis added).

sizes of less than 13 inches, applying the additional “only if achievable” limitation to the latter group of devices.

Similarly, the Commission should reject the assertion that it “require *all* devices capable of playing back video accommodate . . . the robust set of captioning adjustments and configurations in the VPAAC Report.”²⁵ This proposal fails to recognize and incorporate the statutory limitations of technical feasibility and achievability.²⁶ In fact, the VPAAC Report itself made no such recommendation.²⁷ The Commission should follow the CVAA’s practical approach by recognizing that it would be wasteful, expensive, and unnecessary to require all such devices to comply with the full set of captioning requirements.

For waiver purposes, the Commission should make clear that determining the “essential utility” of covered apparatus does not involve “an examination of post-design uses that consumers may find for a product; but rather, an analysis of the facts available to the manufacturer . . . and their intent during the design phase.”²⁸ Section 303(u)(2)(C) expressly limits the determination of a device’s “essential utility” to one of the multiple purposes for which the device was designed.²⁹ Accordingly, the Commission should not deny a waiver request

²⁵ See Consumer Groups at 49-50 (emphasis added).

²⁶ 47 U.S.C. § 303(u)(1) (applying the “technically feasible” limitation to all covered apparatus); § 303(u)(2)(A) (applying the additional “only if . . . achievable” limitation to covered apparatus using a screen of less than 13 inches in size).

²⁷ See VPAAC Report at App. A (listing “recommended requirements for receivers *capable* of rendering closed captioning for television content delivered via the Internet” (emphasis added)).

²⁸ *ACS Order* ¶ 183.

²⁹ See 47 U.S.C. § 303(u)(2)(C)(ii) (“[T]he Commission shall have the authority . . . to waive the requirements of this subsection for any apparatus or class of apparatus . . . for equipment *designed for multiple purposes*, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from *other purposes*.” (emphasis added)).

based on a user deriving utility from receiving or playing back video programming, if such reception or play-back was not one of the multiple purposes for which the device was designed.³⁰

An apparatus manufacturer cannot be responsible for post-design uses and/or end-user modifications that could alter the “essential utility” of a device from the purposes for which it was originally designed.³¹

B. The Final Rules Applicable to Recording Apparatus Should Expressly Incorporate the Limitations Set Forth in Section 203(b).

The Commission’s final rules should expressly recognize that the requirements of Section 303(z), as added by Section 203(b) of the CVAA, only apply when compliance is “achievable” and the apparatus is “designed to” record video programming that is “transmitted simultaneously with sound.”³² In addition, contrary to the suggestion of one commenter,³³ the Commission should make clear in its final rules that covered recording apparatus are only required to render *or* pass through closed captions, not both.³⁴

V. THE CLOSED CAPTIONING REQUIREMENTS SHOULD APPLY ONLY TO THE PRINCIPAL MEANS OF VIEWING VIDEO PROGRAMMING THAT A MANUFACTURER INCLUDES IN COVERED APPARATUS.

Section 203 of the CVAA gives the Commission limited authority to impose accessibility obligations on manufacturers of covered “apparatus.” As CEA and others have explained, the term “apparatus” refers to a physical device and does not refer to standalone software.³⁵

³⁰ See Consumer Groups at 42.

³¹ See CTIA at 13 (“Once a product is available in the market, a manufacturer cannot control the manner in which it is used and may not even know how it is being used.”).

³² 47 U.S.C. § 303(z)(1).

³³ See Ronald H. Vickery at 2.

³⁴ See 47 U.S.C. § 303(z)(1).

³⁵ See CEA at 18; Microsoft at 10; TechAmerica at 4; TIA at 6.

Therefore, the Commission’s rules under Section 203 should be limited to the apparatus itself and, consistent with the *ACS Order*, not reach each component of the apparatus.³⁶ Moreover, consistent with the *ACS Order*,³⁷ manufacturers of covered apparatus should not be held responsible for whether third-party software downloaded by end users complies with the captioning requirements.

To comply with Section 203, the manufacturer of a covered apparatus should only have to ensure that the principal means of viewing video programming, included at the time of sale, renders or displays closed captioning when provided in a standard format. This approach is both consistent with Section 203 of the CVAA and realistic. As an initial matter, amended Section 303(u) of the Act does not require that each and every means of viewing video programming on an apparatus be capable of displaying closed captions.³⁸ As a practical matter, many apparatus may include multiple applications capable of displaying video programming, such as one or more media players and browsers. A reasonable way to reconcile the statutory language and the complexity of many covered apparatus is for the Commission to require captioning compliance only by the apparatus’ principal means of viewing video programming. This distinction is important because the principal means (*e.g.*, the built-in media player) is the means of viewing video programming that the manufacturer of covered apparatus most directly controls.³⁹

³⁶ *See, e.g., ACS Order* ¶ 68.

³⁷ *See, e.g., id.* ¶ 78.

³⁸ *See* 47 U.S.C. § 303(u)(1)(A).

³⁹ *See ACS Order* ¶ 78 (recognizing that “a manufacturer is not responsible for optional software offered as a convenience to subscribers at the time of purchase”). As CEA has demonstrated, Section 203 requires the Commission to limit covered apparatus to those devices intended by manufacturers to be specifically used to receive, play back, or record video programming. The mere inclusion of video hardware and/or a generic media player in a particular apparatus cannot

Requiring apparatus manufacturers to bear any greater responsibility, as suggested by one commenter,⁴⁰ would be inconsistent with the *ACS Order*.

VI. OTHER ISSUES

IP Captioning Complaints. As proposed in the *NPRM*,⁴¹ the Commission should limit the IP captioning complaint process only to complaints against video programming owners (“VPOs”), video programming providers (“VPPs”), and/or video programming distributors (“VPDs”) for alleged violations of the IP captioning requirements under Section 202(b) of the CVAA.⁴² Any suggestion that the Commission extend the IP captioning complaint process to address allegations of an apparatus manufacturer’s non-compliance⁴³ is not supported by the record or by Commission precedent with respect to captioning compliance.⁴⁴ In the event any consumer concerns arise with apparatus subject to the new rules, the Commission has ample authority to investigate any such allegations under its general enforcement authority.⁴⁵

Pass Through of Closed Captions. The suggestion that the Commission should “require *all* interconnection standards and *all* equipment . . . to implement the pass-through of closed captions”⁴⁶ is unsupported by the statute or the record. First, Section 303(z)(2) does not

alone justify a finding that the device is an apparatus designed to receive, play back, or record video programming. *See* CEA at 12.

⁴⁰ *See* Consumer Groups at 43-45.

⁴¹ *See, e.g., NPRM* ¶ 45; *id.* at App. A (proposed § 79.4(f)(3)).

⁴² *See* 47 U.S.C. § 613.

⁴³ *See* Consumer Groups at 39-40.

⁴⁴ *See, e.g.,* DirecTV at 14 (supporting generally the Commission’s proposed IP captioning process); NAB at 32 (urging “the Commission to hew even more closely to the existing framework for television closed captioning complaints than the *NPRM* appears to contemplate”).

⁴⁵ *See, e.g., ACS Order* ¶ 240; *see also* 47 C.F.R. § 1.80(a)(2).

⁴⁶ *See* Consumer Groups at 48 (emphasis added).

contemplate such far-reaching requirements. It only requires that “interconnection mechanisms and standards for digital video source devices *are available* to carry from the source device to the consumer equipment the information necessary *to permit or render* the display of closed captions.”⁴⁷ Second, the CVAA’s only relevant mention of a “pass-through” obligation is for recording apparatus, and a manufacturer of recording apparatus is only required, “if achievable,” to enable “the rendering *or* the pass through of closed captions.”⁴⁸ Thus, the CVAA provides no authority to require *all* interconnection standards and *all* equipment to pass through closed captions. As a practical matter, no regulation of interconnection mechanisms and standards is needed at this time. The record demonstrates that existing as well as emerging interconnection mechanisms already support the pass-through of closed captions to client devices, including MoCA (“Multimedia over Coax Alliance”) and DLNA® (“Digital Living Network Alliance”) home networking technologies.⁴⁹ Thus, regulation of interconnection mechanisms would be premature at this point, and should be deferred at the very least until the Commission has the opportunity to consider the forthcoming second VPAAC report.⁵⁰

Display-Only Exemption. The Commission should not narrow the “display-only” exemption⁵¹ as suggested by one commenter.⁵² “Display-only video monitors” are not only computer monitors, but include any class of video display screen or video projector that requires

⁴⁷ 47 U.S.C. § 303(z)(2) (emphasis added).

⁴⁸ *Id.* § 303(z)(1) (emphasis added).

⁴⁹ *See, e.g.*, NCTA at 27. The Commission should also refrain from regulating general purpose IP interconnection mechanisms such as Wi-Fi. Such interconnection mechanisms will transmit end-to-end anything that is correctly conveyed in the IP stream. *See* Microsoft at 13.

⁵⁰ *See* CVAA § 201(e)(2)(F).

⁵¹ 47 U.S.C. § 303(u)(2)(B).

⁵² *See* Consumer Groups at 46.

a separate source device to render the video content. The Commission should define “display-only video monitors” as any video display device that is not capable of decoding a compressed video signal and is only capable of displaying an uncompressed or “baseband” video signal.⁵³

VII. CONCLUSION

As detailed above and in CEA’s initial comments, CEA urges the Commission to proceed cautiously and adhere closely to the statutory framework established in Title II of the CVAA.

Respectfully submitted,

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⁵³ See TechAmerica at 4-5.