

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**CLOSED CAPTIONING OF INTERNET
PROTOCOL PROGRAMMING:
IMPLEMENTATION OF THE TWENTY-FIRST
CENTURY COMMUNICATIONS AND VIDEO
ACCESSIBILITY ACT OF 2010**

MB Docket No. 11-154

DIRECTV, LLC'S REPLY

DIRECTV, LLC (“DIRECTV”) files this reply in order to support those who opposed the petition for reconsideration filed by TVGuardian, LLC (“TVG”) in the above referenced proceeding.¹ TVG contends that in implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), the Commission incorrectly concluded that Video Programming Providers and Video Programming Distributors (“VPPs/VPDs”) and their digital video source devices need not pass through closed captioning data delivered using Internet protocol (“IP”) to consumer-provided recording devices so long as they render that data in the source device. TVG’s construction is not consistent with the requirements of the CVAA. Indeed, the regulation adopted by the Commission explicitly incorporates the relevant statutory language directly into the rule. It is hard to imagine how this could represent improper implementation of the statutory mandate. Accordingly, as argued by the Consumer Electronics

¹ See Petition for Reconsideration, MB Docket No. 11-154 (filed Apr. 16, 2012) (“Petition”).

Association (“CEA”), the National Cable and Telecommunications Association (“NCTA”), and HDMI Licensing, LLC (“HDMI”),² the Commission should deny TVG’s Petition.

Section 203(b)(z)(1) of the CVAA directs the Commission to “require that, if achievable . . . , apparatus designed to record video programming transmitted simultaneously with sound, . . . [must] enable *the rendering or the pass through* of closed captions.”³ Having received very little comment on this provision, the Commission adopted the proposal in the Notice of Proposed Rulemaking “to incorporate the statutory language of Section 203(b) directly into our rules.”⁴ Accordingly, Section 79.104(b) of the Commission’s rules contains exactly the same language as does Section 203(b) of the statute, preserving the option to enable the rendering *or* the pass through of closed captions. As the Commission concluded, “we find that it is sufficient, for purposes of this provision, if the video output of a digital source device renders the closed captioning in the source device.”⁵

Nonetheless, TVG contends that allowing source devices the option to render or pass through closed captions, as the statute does, would actually violate the statute.⁶ TVG arrives at this counterintuitive conclusion in reliance upon a different provision of the CVAA, Section 203(b)(z)(2), which directs the Commission to require that “interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the

² See Opposition of the Consumer Electronics Association to the Petitions for Reconsideration Filed by TVGuardian and the Consumer Groups (“CEA Opposition”); Opposition of HDMI Licensing, LLC to TVGuardian, LLC Petition for Reconsideration (“HDMI Opposition”); Opposition to Petitions for Reconsideration (“NCTA Opposition”). All of the above oppositions were filed on June 7, 2012 in MB Docket No. 11-154.

³ 47 U.S.C. § 303(z)(1) (emphasis added).

⁴ See *Closed Captioning of Internet Protocol Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, 27 FCC Rcd. 787, ¶ 114 (2012) (“IPCC Order”).

⁵ *Id.*, ¶ 115.

⁶ See Petition at 2-3.

consumer equipment the information necessary to permit or render the display of closed captions.”⁷ The Commission, however, properly concluded that the statute allows an interconnection device to satisfy this mandate either by “permitting” the display of closed captions or by “rendering” them, an interpretation that it found would both give effect to Congress’s use of the disjunctive “or” and achieve the statutory purpose of ensuring consumer access to closed captions.⁸ This is entirely consistent with and parallel to the recording device requirement discussed above, which also allows the option to pass through or render closed captioning.

Notwithstanding this consistent pattern in the statute, TVG contends that source devices actually do not have the option to render closed captioning. TVG speculates that by providing the alternative to either pass through or render captioning, “Congress only wanted to give the FCC flexibility to grant exceptions to the pass-through rule for connections in which the FCC determines that enforcement would actually be *technically infeasible*.”⁹ TVG cites no support in the legislative history for this surprising construction, which (as NCTA puts it) it “creates out of whole cloth.”¹⁰ Indeed, because the statute gives the two alternatives equal prominence, there is no reason to believe that Congress meant to allow only one of them unless the Commission

⁷ 47 U.S.C. § 303(b)(z)(2).

⁸ See *IPCC Order*, ¶ 117. See also CEA Opposition at 10; HDMI Opposition at 4-5; NCTA Opposition at 6-7.

⁹ Petition at 4 (emphasis in original).

¹⁰ NCTA Opposition at 8. See also S. Rep. No. 111-386, 111th Cong., 2d Sess., at 14 (Dec. 22, 2010) (only discussion of the relevant portion of the statute states that “Section 203(b) provides that devices designed to record video programming enable the rendering or the pass through of closed captions, video description, and emergency information, if doing so is achievable”).

granted an exception. Moreover, as CEA and HDMI point out, if Congress had meant to structure the statute as TVG claims, it would have explicitly done so.¹¹

As TVG recognizes, adopting its construction of the statute would have “far-reaching effects on other interpretations and rules” adopted in the *IPCC Order*.¹² Those effects actually illustrate the infirmity of its position. For example, if its position is adopted, TVG asserts that VPPs/VPDs that provide applications, plug-ins, or devices in order to delivery video programming must pass through captioning information and cannot simply render it. Similarly, device manufacturers would be required to render *and* pass through closed captioning data in some manner with the same accuracy of timing received from VPDs. Moreover, the widely used HDMI connector would no longer be compliant, as it cannot pass through closed captioning information (though it does carry captioning rendered from the source device). In other words, TVG recognizes that overriding the Congressional intent to allow compliance by either passing through or rendering captions with respect to Section 203(b) would have the effect of overriding that intent with respect to other sections of the statute (and related implementing rules) as well. Yet nowhere does TVG explain why Congress consistently provided alternative compliance methods of passing through or rendering captions if in fact it meant to mandate something completely different.

* * *

TVG’s position is inconsistent with the design and intent of the CVAA. Moreover, if its erroneous interpretation were adopted, it would propagate well beyond Section 203(b) of the statute and would improperly reduce the compliance options Congress meant to make available

¹¹ See CEA Opposition at 9-10; HDMI Opposition at 6.

¹² Petition at 6-9.

for those with captioning requirements. For the foregoing reasons, DIRECTV echoes the call of those who have requested that the Commission deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of June, 2012, a copy of the foregoing Reply was served by U.S. mail, postage prepaid, upon:

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