

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

In the Matter of)
)
Media Bureau and Consumer and) MB Docket No. 12-108
Governmental Affairs Bureau Seek)
Comment on Second VPAAC Report: User)
Interfaces, and Video Programming Guides)
and Menus)

REPLY TO COMMENTS IN RESPONSE TO PUBLIC NOTICE

**National Association of the Deaf
Telecommunications for the Deaf and Hard of Hearing, Inc.
Deaf and Hard of Hearing Consumer Advocacy Network
Association of Late-Deafened Adults, Inc.
California Coalition of Agencies Serving the Deaf and Hard of Hearing
Technology Access Program at Gallaudet University**

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (collectively, the “Consumer Groups”) and the Technology Access Program at Gallaudet University (TAP) respectfully submit this reply to comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) April 24, 2012 Public Notice in the above-referenced proceedings.¹ The Consumer Groups represent approximately 48 million deaf and hard of hearing Americans and appreciate this opportunity to submit our reply to comments.²

¹ *In the Matter of Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, MB Docket. No. 12-108, Public Notice, DA 12-635 (rel. Apr. 24, 2012) (“*Public Notice*” or “*PN*”).

² A recently released study by Johns Hopkins School of Medicine found that more than forty-eight million Americans over the age of twelve—almost one in every five people in this country—are deaf or hard of hearing. See

I. THE TERM “REASONABLY COMPARABLE” SHOULD BE TAKEN ON A FUNCTIONAL BASIS

Both the CEA and NCTA advocate for maximum flexibility in interpreting the term “reasonably comparable” in Sections 204(a) and 205(a) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).³ While CEA and NCTA ask for maximum flexibility in interpreting “reasonably comparable,” they do not give any examples of what “reasonably comparable” means or how it should be appropriately interpreted aside from giving the industry carte blanche to do as it sees fit under the banner of “maximum flexibility.” The CEA goes great lengths to insist that controls used for accessing closed captions must not be identical or strictly equivalent to volume controls and/or channel selection, however, the CEA does not explain what it considers to be “reasonably comparable” yet not identical.⁴ We are very concerned that the industry will unreasonably stretch the term “reasonably comparable” to become a loose standard unless there is some reasonably clear guidance. The term “reasonably comparable” should be taken on a functional basis. For example, if a person can access the volume control with one press on a remote control without having to call up a menu, then reasonably comparable is also a single motion on a remote control without having to call up a menu. A button used for access to closed captions might not be the same size or shape as the volume buttons, but at the same time it should not be located somewhere completely different and require more searching. The Commission should provide clear guidance on how far the term “reasonably comparable” can be stretched but still meet the intent of the CVAA. Some tests for “reasonably comparable” might be:

Amanda Chan, 1 In 5 Americans Has Hearing Loss: Study, THE HUFFINGTON POST (Nov. 15, 2011, 4:38 PM EST), http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-infive_n_1095586.html.

³ *Comments of CEA*, MB Docket No. 12-108 at 9 (June 4, 2012) (“*CEA Comment*”); *Comments of NCTA*, MB Docket No. 12-108 at 3-4 (June 4, 2012) (“*NCTA Comment*”).

⁴ *CEA Comment* at 9.

1. A reasonably comparable method should not cause the user to have to carry out a greater number of actions, or to open menus or otherwise have to search for or navigate to find the controls used for access to closed captions.
2. When looking at the volume control, the user should be able to also see the “reasonably comparable” control used to access closed captions.
3. If the volume control were to be moved to the same location as the “reasonably comparable” control used to access the closed captions, it should not elicit user complaints as to being confusing, hard to find, or inconvenient to operate.

The goal of these tests is to ensure that the closed caption controls are not hidden among a maze of menus but are easily accessible by users.

Some examples of what might be reasonably comparable are:

- A button or slide switch that accesses the closed caption control on a remote is reasonably comparable to a volume button on a remote.
- If the volume control is accessed on a touch screen, the closed caption access control should be on the touch screen and at the same menu level as the volume control.
- If the Commission does not believe that the presence of physical volume controls necessarily require physical closed caption access controls or the same equivalence for touch screen controls or other kinds of software controls, then the Commission should at least ensure that the closed caption access control is at the same level as the volume control. In other words, if a user does not need to enter a menu to access the volume control, then the user should not have to enter a menu to access the closed caption control. Whenever the volume control is on the first level of access (no steps needed to access) then to provide similar access to the closed caption control is to also have it on the first level.

Some examples of what is *not* reasonably comparable:

- A remote control that has more than 10 buttons on it including volume, channel selection and other controls, but the closed caption access control is relegated to a menu that must be pulled up on a screen.
- An interface where one is able to access the channel and volume controls on the “home” screen without entering a menu, but one must enter a menu to find the closed caption access control.
- A hardware video player or software video player where one can control the volume and other playback controls (play, pause, stop, etc) at the first level during and before

the video starts, but must enter a menu to find the closed caption access control.

- Any situation where a device must be turned off or a video program must be exited in order to access the closed caption control.

The Commission needs to include examples like these to provide guidance for the industry and for consumers to be able to appropriately file complaints with the Commission when a device or product does not offer “reasonably comparable” access to the closed caption control. Such examples will also allow the industry some flexibility, but give some clear indication of what is generally considered comparable and is not.

Deaf and hard of hearing people want to be able to easily turn on/off the closed captions at any time during the program just like hearing people can adjust the volume. Often during programs, text will show up on the screen such as a news headline or sports score and it will be covered by the closed captions. In order for anyone watching the program with closed captions, he or she needs to be able to quickly turn off the closed captions to read the text on the screen, and then to be able to turn the closed captions back on without missing much spoken information. That is why the best way to ensure access for deaf and hard of hearing users is to ensure that they’re able to quickly turn on or off the closed captions to fully understand the program and any text shown on the screen. This is similar to a hearing person wanting to quickly be able to turn up the volume when someone on a program is speaking softly or there is background noise in the room where the hearing person is watching the program. In the alternate, if the Commission does not believe that the “reasonably comparable” test should focus on the placement and functionality of the volume control, the caption control should at least be as prominent as the pause button or channel/program control, whichever is the more prominent and easy to find. Finally, we are pleased that there has been no opposition to the VPAAC

Second Report report recommendation that closed captioning controls be persistent until a user causes it to be changed.⁵

II. HARMONIZATION WITH THE ACCESS BOARD'S NEW GUIDELINES ONLY MEANS THAT THEY SHOULD NOT CONFLICT

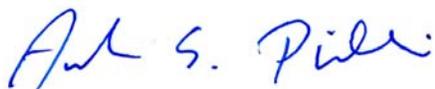
The CEA urged the Commission to examine the Access Board's new guidelines and harmonize the user interface requirements where appropriate.⁶ If the Commission decides that it is necessary to harmonize its accessibility requirements for closed caption controls with the new Access Board guidelines, it should only make sure that the two do not conflict. If one requirement is stricter than the other, there is no conflict unless the two cannot both be satisfied. If satisfying one will satisfy the other (even if it goes beyond what the other would require) then the two can both be met and there is harmonization.

In conclusion, the Consumer Groups and TAP appreciate this opportunity to submit this reply to comments and stress the importance of making sure that user interfaces on digital apparatus and on-screen menus and guides on navigation devices are fully accessible for individuals with disabilities.

⁵ *VPAAC Second Report* at 12-13.

⁶ *CEA Comment* at 11.

Respectfully submitted,



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