

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accessibility of User Interfaces, and Video)	MB Docket No. 12-108
Programming Guides and Menus)	

COMMENTS OF AT&T

July 15, 2013

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AT&T Services, Inc. (“AT&T”) files these Comments in response to the Notice of Proposed Rulemaking (“*Notice*”) released by the Federal Communications Commission (the “Commission”) to implement Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “CVAA”)¹ pertaining to the accessibility of digital apparatus and navigation devices.²

I. INTRODUCTION AND SUMMARY

Since passage of the CVAA, the Commission has worked diligently with service providers, manufacturers, consumers, disability rights group, and various industry groups to develop regulations to implement the CVAA requirements in a manner that improves access to communications services and video programming for persons with disabilities. AT&T supports the Commission’s efforts in this regard and is pleased to participate in this most recent CVAA rulemaking proceeding to bring life to Sections 204 and 205. Making digital apparatus and navigation devices more usable for persons with vision loss and/or hearing loss will help those

¹ Twenty-First Century Communications and Video Accessibility Act, S.3304 (P.L. 111-260) (2010), as amended by S. 3828 (P.L. 111-265) (2010) (“21st Century Accessibility Act”).

² Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108, *Notice of Proposed Rulemaking* (rel. May 30, 2013) (“*Notice*”).

persons more fully utilize communications services and equipment and better access video programming.

When interpreting a statute, we must be mindful of Congress's intentions and try to implement those intentions. The complicated and at times, seemingly conflicting language of Sections 204 and 205 make that a challenge in this proceeding. Therefore, AT&T encourages the Commission to focus primarily on the plain language of Sections 204 and 205 to discern statutory intent. In fact, the rules of statutory construction require that focus and lead to the inevitable conclusion that Sections 204 and 205 are designed to work in tandem to create a clear statutory scheme to require accessible user interfaces for different types of devices used to access video programming.

Section 204 imposes the obligation to provide digital apparatus used for video programming, *other than navigation devices*, that are accessible, that include audible menus and other visual indicators, and that offer simplified access to closed captioning and video description. Conversely, Section 205 imposes the obligation to provide navigation devices used for multichannel video programming that include audible menus and guides and simplified access to closed captioning. While other interpretations of Sections 204 and 205 may seem plausible, they are not supported by the statutory language and will cause confusion for both industry and consumers.

Sections 204 and 205 do not require all functions of digital apparatus and navigation devices to be accessible and/or audible. Rather, they require accessibility and audible menus, guides, and visual indicators only for those 11 functions that the Video Programming Accessibility Advisory Committee ("VPACC") has identified as essential to the video consumption experience. The VPACC struck the appropriate balance in identifying these 11

essential functions as key to accessibility. Therefore, making these essential functions accessible should be recognized as a safe harbor for compliance with Sections 204 and 205 to the extent that those functions are included in a covered apparatus or device. (Although Sections 204 and 205 require accessibility for these functions, they do not impose an obligation that all digital apparatus or navigation devices contain these functions.)

Congress recognized that entities covered by the CVAA, and specifically by Sections 204 or 205, require flexibility to decide how best to comply. The Commission should likewise recognize the need for that flexibility to improve accessibility while continuing to innovate in the development of new products and features, including accessibility features. Specifically, covered entities should have the flexibility to offer third party accessibility solutions (and to make those solutions available to consumers); to utilize accessibility solutions via software, peripheral devices, specialized customer premises equipment, network solutions or other means; and to offer a simplified mechanism to select closed captioning and/or video description (to the extent required by Section 204), even if that mechanism requires more than a single action to activate and use.

Even with the benefit of the flexibility contemplated by Congress, covered entities will require significant time to develop solutions to the Sections 204 and 205 requirements. AT&T proposes a three year implementation for all Section 204 and Section 205 requirements to afford covered entities sufficient time to design, develop, and deploy apparatus and devices that include the accessibility features contemplated by those statutes and to provide consistency in interpretation and application.

II. DISCUSSION

A. SECTIONS 204 AND 205 OF THE CVAA WORK IN TANDEM.

Sections 204 and 205 of the CVAA are designed to work in tandem. Section 204 requires that control of appropriate built-in functions in digital apparatus used to access video programming be accessible to persons who are blind or visually impaired, that on-screen text menus and visual indicators for those functions be accessible via audio output, and that those apparatus allow access to closed captioning and video description features through a mechanism similar to a key, button, or icon.³ Section 204 also excludes navigation devices, as defined by Commission rule section 76.1200,⁴ from the term “apparatus.”⁵ In contrast, Section 205 explicitly applies to navigation devices, requiring those devices that are used to access multichannel video programming to make on-screen text menus and guides audibly accessible and to allow access to closed captioning capabilities through a mechanism similar to a button, key, or icon.⁶ The plain language of these statutes defines their scope—navigation devices, which are used to access multichannel video programming, are covered by Section 205 and all other digital apparatus that are designed to receive or play back video programming transmitted in digital format simultaneously with sound are covered by Section 204.

1. Section 205 Applies To Navigation Devices.

In the *Notice*, the Commission seeks comment on an interpretation that applies Section 205 only to MVPD-supplied navigation devices, menus and guides and applies Section 204 to all

³ 47 U.S.C. §303(aa)(1)-(3)(2011).

⁴ 47 C.F.R. §76.1200.

⁵ *Id.* at §303(aa)(4) (“the term ‘apparatus’ does not include a navigation device”).

⁶ *Id.* at §303(bb)(1), (2).

other “apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound,” including navigation devices not supplied by MVPDs. AT&T does not believe that the language of Section 205 supports that interpretation. Instead, AT&T believes that the Commission’s alternative interpretation—where Section 205 applies to navigation devices and Section 204 applies to digital apparatus that are not navigation devices—is more faithful to and consistent with the statutory language and the underlying purposes of the CVAA.

The language of Section 205 does not limit its application to MVPD-supplied equipment. In fact, applying Section 205 only to MVPD-supplied devices would create the confounding scenario where navigation devices supplied by an MVPD must meet Section 205 and navigation devices not supplied by the MVPD need not meet Section 205, even if the devices access the same MVPD services and even if they are the same make and model of device. Instead, Section 205 should be extended to any navigation device provided upon request, regardless of who provided the device.⁷ This will enable users with vision loss to select from a range of devices in the same manner as sighted users.

The Commission concludes that MVPDs are “responsible for compliance” with Section 205 because the statute presumes a preexisting relationship between the person requesting or using the device, menu and/or guide and the entity providing it. While Section 205 may presume a relationship, it requires neither a relationship that preexists the request for the accessible navigation device nor a relationship exclusively with an MVPD. Moreover, even if MVPDs have a preexisting relationship with their customers, nothing precludes a person from also

⁷ *See Notice* at 9, ¶21 (“We note that nowhere in the statute does it say that the navigation device carve-out contained in Section 204 or the term “navigation devices” in Section 205 applies only to navigation devices supplied by MVPDs.”).

forming a relationship with a retailer or manufacturer or requesting from a retailer or manufacturer a navigation device that meets Section 205.

The Commission further presumes that Section 205 is directed to MVPDs because an MVPD “provides devices (typically for lease) to its customers upon request,” whereas consumer electronics retailers offer consumers devices for purchase and because a consumer would not expect to pay for a device obtained from a retailer for “free.”⁸ These distinctions are illusory. Customers often purchase, rather than lease, navigation devices from MVPDs, just as they would purchase such devices from retailers or manufacturers. Further, a consumer would not expect to obtain a “free” navigation device from an MVPD any more than it would expect to obtain a “free” navigation device from a retailer or manufacturer. Section 205 requires the provision of accessible navigation devices for “no additional charge.” This language should be interpreted to mean without greater expense than the cost of an inaccessible device, not interpreted to mean “free” or “no cost.” Had Congress intended to require the provision of navigation devices at no cost, it would have expressly stated it. Lastly, concluding that MVPDs alone are responsible for compliance with Section 205 ignores the express extension of this statute to software and hardware manufacturers.⁹

Where the statute can be reasonably interpreted as written, it should be interpreted in that manner. It is reasonable to conclude that Congress understood that consumers might acquire navigation devices from either MVPDs, retailers or manufacturers. Thus, any MVPD, retailer, or

⁸ *Notice* at 5, ¶¶8, 9.

⁹ 47 U.S.C. §303(bb)(2)(2011) (“With respect to apparatus features and functions delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software. With respect to apparatus features and functions delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.”).

manufacturer that offers a navigation device to consumers must offer a device compliant with Section 205 to consumers who request an accessible navigation device. Accessibility may be embedded in off-the-shelf navigation devices, similar to the captioning chip, or a different but comparable device, at no additional charge, may be provided.

2. Section 204 Applies to Digital Apparatus that Access Video Programming and are Not Navigation Devices.

AT&T agrees with the Commission’s conclusion that Section 204 focuses on the obligations of manufacturers to make covered digital apparatus accessible. In the *Notice*, the Commission observes how compliance with subsection (aa)(1) is tied to the design, development and fabrication of the apparatus and that those terms apply to manufacturers.¹⁰ Subsection (d) of Section 204 also ties the compliance date to the manner in which the apparatus is “designed and manufactured,” reinforcing this point. However, AT&T disagrees that the intended scope of Section 204 is muddled by language stating that the term digital apparatus “does not include a navigation device.”¹¹ To the contrary, the plain language of Section 204—“in applying this subsection the term ‘apparatus’ does not include a navigation device, as such term is defined in section 76.1200 of the Commission’s rules (47 CFR 76.1200)”¹²—could not be more clear. Section 204 does not apply to *any* navigation devices. Where, as here, Congressional intent is clear, a Federal agency must give effect to that unambiguously expressed intent.¹³

¹⁰ *Id.* at §303(aa)(1).

¹¹ *See Notice* at 7, ¶15.

¹² 47 U.S.C. §303(aa)(4)(2011).

¹³ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 841-843, 104 S. Ct. 2778, 2781-2782, 81 L. Ed. 2d 694 (1984).

In the *Notice*, the Commission expresses concern about interpreting this navigation device exclusion language literally because Section 204 would apply to few current devices, largely nullifying its impact. Yet, this very interpretation proposed by the Commission would not just nullify, but would outright disregard, the navigation device exclusion language in Section 204. Such an interpretation would not be reasonable, as it would render the exclusion language void.¹⁴ Further, such an interpretation presumes Congressional intent for a broader application of Section 204 than is expressed in the statute.

AT&T agrees with the Commission that Sections 204 and 205 are written to prevent an overlap in coverage, “that is, a device can be a Section 204 device or a Section 205 device, but not both.”¹⁵ However, instead of drawing the line between MVPD supplied navigation devices and non-MVPD navigation devices, Sections 204 and 205 should be interpreted as written-- navigation devices (i.e. devices designed to access multichannel video programming) are covered by Section 205 and digital apparatus used to access video programming that are not navigation devices are covered by Section 204.

B. PROVIDING AUDIO ACCESSIBILITY FOR THE ESSENTIAL FUNCTIONS IDENTIFIED BY THE VPACC SHOULD BE A SAFE HARBOR UNDER SECTIONS 204 AND 205 FOR PROVIDING ACCESSIBLE DIGITAL APPARATUS AND ACCESSIBLE MENUS, GUIDES AND VISUAL INDICATORS.

Section 204 requires “on-screen text menus and other visual indicators” for “appropriate built-in functions” be accompanied by “audio output.” Section 205 requires “on-screen text

¹⁴ *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S. Ct. 441, 151 L. Ed. 2d 339 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174, 121 S. Ct. 2120, 2125, 150 L. Ed. 2d 251 (2001)) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, on the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant’”).

¹⁵ *Notice* at 7, ¶17.

menus and guides” for the “display or selection of multichannel video programming” to be “audibly accessible.” While these statutes use slightly different language, AT&T agrees with the conclusion in the *Notice* that Sections 204 and 205 should require audio accessibility for the same functions. However, the *Notice* proposes regulations that require audio accessibility for all user functions, which is beyond the scope of Sections 204 and 205. Instead, Section 204 and Section 205 should be interpreted to require audible accessibility only for those functions that are essential to the video consumption experience for a person who is blind or visually impaired.

1. The “Appropriate” Functions that Must be Made Audibly Accessible Under Section 204 are Those Functions that a Person Who is Blind or Visually Impaired Needs to Select or Access Video Programming.

Section 204 requires digital apparatus used for video programming to be designed, developed, and fabricated with “appropriate” built-in apparatus functions that are accessible to and usable by individuals who are blind or visually impaired¹⁶ and to include audio output for on-screen text menus or other visual indicators used to access those functions.¹⁷ In the *Notice*, the Commission tentatively concludes that the “appropriate” functions that must be made accessible under Section 204 include all of the user functions of the apparatus.¹⁸ This interpretation of the word “appropriate” is overly broad. AT&T believes that Congress used the word “appropriate” to mean “appropriate for a person who is blind or visually impaired.” In other words, the built-in apparatus functions that must be accessible and usable and that must be accompanied by audio output are those functions that a person who is blind or visually impaired

¹⁶ 47 U.S.C. § 303(aa)(1)(2011).

¹⁷ 47 U.S.C. § 303(aa)(2)(2011).

¹⁸ The Commission omitted only debugging/diagnostic functions because they are typically service related functions used by technicians rather than users. *Notice* at 12-13, ¶30.

would need to use to select or access video programming. This interpretation would not include those functions used by technicians to install, repair or maintain the service as well as functions that would not be used by a person with a vision disability.

AT&T agrees with the VPAAC Working Group 4 that the “appropriate” apparatus functions should be defined as the 11 functions identified as “essential” in the VPAAC Second Report on User Interfaces, namely (1) power on/off; (2) volume adjust and mute; (3) channel and program selection; (4) channel and program information; (5) configuration – setup; (6) configuration – closed captioning control; (7) configuration – closed captioning options; (8) configuration – video description control; (9) display configuration info; (10) playback functions; and (11) input selection.¹⁹ The VPAAC Working Group 4 considered these 11 functions to be “essential to the video consumption experience”²⁰ and “the baseline functionality required to ensure accessibility without constraining innovation and product differentiation.”²¹ AT&T believes that the VPAAC Working Group 4 struck the proper balance and that the 11 functions it identified as “essential” should be sufficient to meet Section 204 and be recognized as a “safe harbor” for manufacturers that make those functions accessible.²²

¹⁹ Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming and Menus, at 7-8 (April 9, 2012).

²⁰ *Id.* at 8.

²¹ *Id.* at 3.

²² Given the pace of technological change, it would be reasonable for the Commission to reconvene the VPAAC, or similar body, periodically to review and modify these “essential” functions as needed.

2. Providing Audible Accessibility for the VPAAC Essential Functions also Should be a Safe Harbor for Section 205 Compliance.

Similarly, making the 11 essential functions in a navigation device used for multichannel video programming audibly accessible should be a safe harbor to meet the accessibility requirement for on-screen text menus and guides in Section 205. Section 205 limits the on-screen text menus and guides that must be audibly accessible to those used for the display or selection of multichannel video programming. Although this limiting language could be interpreted narrowly to apply to only channel and programming guides and menus, in AT&T's opinion, a more reasonable interpretation is that audio accessibility is required for those same functions that must be accessible under Section 204. Applying the same interpretation as with Section 204 would allow Sections 204 and 205 to work in tandem, fulfilling the harmonization between these statutes intended by Congress. It would also prevent confusion among persons with disabilities, allowing them to easily predict the accessible functions in all covered devices.

Although Section 205 may be applicable to MVPDs, retailers, and manufacturers, MVPDs do not have control over all functions of a navigation device and thus should not be solely responsible for insuring that all functions of a navigation device are audibly accessible. Some functions of a navigation device, even some of the 11 essential functions, are controlled by the device itself and cannot be addressed by the MVPD service, such as input selection, configuration-set up, voice control, and turning/power on and off. The Commission should clarify that MVPDs should be responsible for making audibly accessible only those functions that they control.

3. Sections 204 and 205 Do Not Require Manufacturers or MVPDs to Add Functions to Digital Apparatus or Navigation Devices.

Sections 204 and 205 require accessible “built-in apparatus functions” and on-screen text menus and guides.” The intent of these statutes is to provide equal access, not to require the inclusion of specific functions in a digital apparatus or navigation device.²³ Some digital apparatus and navigation devices may be designed to perform a narrow function or access video programming only on a secondary basis and, thus, may not be designed or manufactured to perform all of the 11 VPAAC essential functions. Requiring that every digital apparatus and navigation device provide all 11 essential functions would unnecessarily drive up design and development costs and constrain innovation. Thus, the FCC should clarify that Sections 204 and 205 do not mandate the inclusion of any specific functions.

C. SECTION 205 ALLOWS FOR MAXIMUM FLEXIBILITY TO COMPLY WITH ITS TERMS.

A central tenet of the CVAA is that covered entities should be given flexibility as to how to comply with its terms.²⁴ Congress understood that the pace of technological change is too fast to dictate compliance specifications and that covered entities are in the best position to determine how best to comply without slowing down that pace. Section 205 expressly directs the Commission to grant such flexibility to entities covered by that statute and the Commission should heed that direction.

1. Covered Entities Should be Able to Use Third Party Solutions to Make On-Screen Text Menus and Guides Audibly Accessible.

²³ Other laws, such as Section 203 of the CVAA, may require equipment to incorporate specific functions. But, that is not the focus of Sections 204 or 205.

²⁴ See 47 U.S.C. §§613(c)(3), 617(a)(2), 617(b)(2), 619(b), (2011); Pub. L. No. 111-260, §203(e), 124 Stat. 2751, 2773 (2010).

Section 205(b)(4)(A) allows covered entities “maximum flexibility” to determine the manner in which to make on-screen text menus and guides audibly accessible and to provide accessibility solutions via software, a peripheral device, specialized consumer premises equipment, a network-based service or other manner.²⁵ In the *Notice*, the Commission acknowledges this language and concludes that the accessibility solution “must be provided by the entity providing the navigation device, rather than requiring the customer to seek out such a solution from a third party.”²⁶ AT&T agrees with the Commission that the person with vision loss should not have to seek out accessibility solutions. Covered entities seeking to rely on third party accessibility solutions should make those solutions available to persons with vision loss.

To ensure that covered entities are allowed the “maximum flexibility” contemplated by Congress in determining the manner in which to comply with Section 205, the Commission should clarify that it is not prohibiting covered entities from utilizing third party accessibility solutions. Rather, the Commission is merely requiring that covered entities make any third party accessibility solutions available to the person with vision loss. Covered entities could either deploy their own accessibility solution or provide a means for a person with vision loss to identify and retrieve, download or easily access that solution. This would enable covered entities to work with assistive technology developers if they believe it would provide equal or better access and these solutions are not offered at a cost above that of the standard device.

An interpretation of Section 205 that prohibits the use of third party accessibility solutions would not only limit the “flexibility” of the covered entity to determine how it will comply, but may also limit the types of accessibility solutions available to users of navigation

²⁵ Pub. L. No. 111-260, §§ 205(b)(4)(A), 124 Stat. 2751, 2775 (2010).

²⁶ *Notice* at 18, ¶40.

devices used to access multichannel video programming. It would also be inconsistent with other provisions of the CVAA that have allowed covered entities to utilize third party accessibility solutions.²⁷ Absent clear language to the contrary, which does not exist, the Commission should clarify that covered entities can rely on third party accessibility solutions to comply with Section 205.

2. Covered Entities Providing Navigation Devices Should be Able to Use Software, a Peripheral Device, Specialized Consumer Premises Equipment, a Network-Based Service or Other Solution to Meet the Closed Captioning User Control Requirements.

Section 205(b)(5) requires the Commission to permit the entity providing the navigation device used to access multichannel video programming “maximum flexibility” in selecting the best means to make closed captioning accessible via a mechanism that is reasonably comparable to a button, key, or icon.²⁸ In some cases, the best means for a covered entity to provide the required closed captioning user controls would be through software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution.

For example, a covered entity might comply by providing the user with a remote control that activates the closed captioning function through the navigation device. Or, the entity might comply by providing the user with an application that creates a closed captioning icon on a third party device, such as the user’s smartphone or tablet. In either case, the application might be non-intrusive to the navigation device itself, but would provide the user a simplified method to select the closed captioning functions without the costs, long timelines, and logistics issues involved in modifying navigation device hardware as well as adhere to settings set by the

²⁷ 47 U.S.C. §617 (2011). *See also* 47 C.F.R. §§14.10-14.21.

²⁸ Pub. L. No. 111-260, § 205(b)(5), 124 Stat. 2751, 2775 (2010).

customer for access tailored to their individual preference or to address additional disabilities. For these reasons, the Commission should clarify that covered entities have the flexibility to provide the closed captioning user interface via solutions in software, a peripheral device, specialized consumer premises equipment, a network-based service or otherwise.

3. Section 205 Should Allow for More Than a Single Step to Select Closed Captioning.²⁹

In the *Notice*, the Commission concludes that providing an accessible closed captioning user interface would require a single step activation process. As the Commission describes it, “users would be able to activate closed captioning features . . . immediately in a single step just as a button, key, or icon can be pressed or clicked in a single step.”³⁰ Although AT&T agrees that requiring a consumer to navigate a multi-step, main interface menu, such as a “Settings Menu,” to activate closed captioning would not meet the requirements of Section 205 and that covered entities are not entitled to unlimited discretion in determining how to comply with Section 205, AT&T believes that a middle ground exists.

Congress did not impose a single step process and the Commission should not impose such a hard and fast rule on its own initiative. Adopting such a process is contrary to Congress’s directive that covered entities have maximum flexibility to determine how to comply with Section 205. In effect, it would require a closed captioning “button, key, or icon” rather than a mechanism that is “reasonably comparable” to a button, key or icon. AT&T is also concerned that this single step process could reduce the ability of covered entities to provide simplified

²⁹ Although this discussion focuses on the need to provide simplified access to closed captioning for navigation devices under Section 205, it should also be applied to the requirement to provide simplified access to closed captioning and video description for digital apparatus that are not navigation devices under Section 204, as it would allow for the interpretation of these Sections in a harmonious way and reduce confusion for manufacturers.

³⁰ See *Notice* at 19, ¶43.

access to closed captioning through innovative means. For example, although Section 205 does not address video description on navigation devices, a covered entity may nevertheless seek to deploy an interface mechanism that allows the user to select video description as well as closed captioning. Selecting closed captioning with such an interface mechanism may take more than a single step, but it may be the most effective way for the covered entity to simplify access to all accessibility features set by the user, not just to closed captioning. This may allow a user who has both a hearing loss and mobility disability to toggle presets for voice input and captioning.

AT&T is also concerned that requiring a single step process could cause manufacturers to eliminate confirmations (i.e. feedback). Confirmations are frequently used to help the user know which selection on menus and guides have been made, both for features used by persons with disabilities and features used by persons without disabilities. Eliminating confirmations could cause confusion for users of navigation devices by invoking the selected change before they understand the import of the selection and by unnecessarily complicating the selection process. This could be problematic for users with cognitive disabilities as well as those without such disabilities who may not be technology savvy. Even if the Commission keeps the single step process, it should clarify that confirmations are still part of the single step.

In the *Notice*, the Commission states that for graphical user interfaces, two “clicks” or “taps,” the first of which would display a captioning-specific option menu and the second of which would select a closed captioning option, would meet a single step requirement. Reference to a “single step” for these types of uses creates confusion. In fact, AT&T foresees substantial confusion from other common functions that might require more than one “click” or “tap,” but is likely to be reasonably comparable to a button, key, or icon. For example, devices with a speech recognition feature may need one action to activate the voice command feature and a second

action to activate or adjust the closed captioning feature; touchscreens on many devices, due to their small size, tend to have few buttons, keys, or icons, creating a need for multiple options or tiers; and adjusting volume may involve more than a click, such as tapping the smartphone screen once to access volume controls and then adjusting the volume with those controls. At bottom, AT&T considers a “single step” process to be unworkable.³¹

D. VIDEO DESCRIPTION USER CONTROLS ARE NOT REQUIRED FOR NAVIGATION DEVICES USED FOR MULTICHANNEL VIDEO PROGRAMMING.

Sections 204 and 205 require digital apparatus and navigation devices, respectively, to provide simplified access to closed captioning through a mechanism reasonably comparable to a button, key or icon.³² Simplified access to video description on a digital apparatus is also expressly required by Section 204, but is not referenced with respect to navigation devices under Section 205. The Commission asks if Section 205 should nonetheless require simplified access to video description because the mechanism to access the function must be “reasonably comparable to a button, key, or icon designated for activating the closed captioning, or *accessibility features*.”³³ The answer is “no.” The phrase “accessibility features” in Section 205 merely describes the accessibility solution to which the mandated mechanism must be reasonably comparable and not the features that the mechanism must be able to access. While AT&T agrees that simplifying access to video description in navigation devices used for multichannel video

³¹ If, for sake of certainty, the Commission defines “reasonably comparable” in terms of a specific number of steps, then for the reasons explained above, a three step requirement would be more reasonable, workable, and accurate, and provide covered entities with the flexibility envisioned by Congress.

³² 47 U.S.C. § 303(aa)(3), (bb)(2) (2011).

³³ *Notice* at 20, ¶45.

programming is as desirable as simplifying access to that feature in digital apparatus used for video programming, the plain language of Section 205 constrains the Commission from taking a more expansive reading that would require video description, or other “accessibility features” besides closed captioning, to be activated in digital apparatus via a mechanism similar to a button, key, or icon.

E. THE COMMISSION SHOULD ADOPT A THREE-YEAR PHASE-IN PERIOD FOR SECTIONS 204 AND 205.

Section 204 provides for a minimum compliance date of two years following Federal Register publication for all digital apparatus used for video programming that receive or play back the Advanced Television Systems Committee’s Mobile DTV Standards A/153.³⁴ Section 205 provides for a compliance date of no less than two years after the regulations are adopted for covered entities to place in service navigation devices used for multichannel video programming that include simplified access to closed captioning³⁵ and no less than three years after the regulations are adopted for covered entities to begin placing in service navigation devices used for multichannel video programming that include audibly accessible on-screen text menus and guides.”³⁶

AT&T proposes a uniform date for compliance with all parts of Sections 204 and 205 that is three years after the earlier of the date that the rules are published in the Federal Register and the statutory deadline by which the Commission must adopt its implementing rules. Sections 204 and 205 were drafted to work in tandem. A uniform date will allow for a clear,

³⁴ Pub. L. No. 111-260, § 204(d), 124 Stat. 2751, 2774 (2010).

³⁵ Pub. L. No. 111-260, § 205(b)(6), 124 Stat. 2751, 2775 (2010).

³⁶ *Id.*

smooth transition to the new requirements and eliminate confusion that might occur with multiple compliance dates.

Dated: July 15, 2013

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert Vitanza", with a long horizontal flourish extending to the right.

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