

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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

**COMMENTS OF ROVI CORPORATION**

Stephen Yu  
Executive Vice President and General Counsel  
Rovi Corporation  
2830 De La Cruz Blvd  
Santa Clara, CA 95050

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## SUMMARY

We disagree with the Commission's conclusion that Section 204 should be expanded to include certain navigation devices. The Commission should adopt rules that apply Section 204 to apparatus that are not navigation devices and Section 205 to navigation devices. The Commission should also adopt rules that identify the VPAAC's recommended 11 essential functions as an exhaustive list of appropriate functions under Section 204 (in 47 U.S.C. § 303(aa)(1)), and limits Section 205 to text menus and guides (in 47 U.S.C. § 303(bb)(1)). The Commission should reject the "single step" criteria for "reasonably comparable to a button, key or icon" and should instead require a mechanism comparable in accessibility to physical buttons, when physical buttons are provided. The rules should specify that parties that elect to comply with Section 205 by supplying separate technology should be required to provide the technology, and the technology should be required to provide the same functions as an integrated solution. The Commission should exempt small cable systems from the requirements of Section 205, and should set an effective date of the Section 205 regulations to be three years after the adoption of the final rules.

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**I. INTRODUCTION**

Rovi Corporation (“Rovi”), founded in 1983 as Macrovision, is an industry leading provider of digital entertainment technologies for businesses in the consumer electronic, cable and satellite and entertainment markets across the world. The company is focused on developing entertainment technology that helps consumers sort through the numerous programming options available to find television shows and movies to watch. With its acquisitions of Gemstar-TV Guide and Sonic Solutions, Rovi is a preeminent provider of entertainment content distribution and navigation technologies, entertainment information and intellectual property.

Rovi Corporation is an industry-leading provider of both consumer-facing and professional products and services world-wide. Our businesses include services and technologies such as electronic program guide products, home and professional content authoring systems, Internet content delivery services, and Internet receiver solutions.

Rovi operates “white label”<sup>1</sup> services (known as Rovi Entertainment Store, or “RES”) for providing online video, including licensing content and operating the back-end services, billing,

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<sup>1</sup> Rovi does not sell this service directly to consumers. See white-label product, [http://en.wikipedia.org/wiki/White-label\\_product](http://en.wikipedia.org/wiki/White-label_product) (last visited June 8, 2011).

infrastructure and content delivery for a number of clients including retailers, device manufacturers and web presences, such as Best Buy, RIM/BlackBerry, Flixster/Warner Bros. and others.

Additionally, Rovi's products include a widely-adopted video format (DivX), a metadata service for television, and a number of program guides and video players for televisions, tablets, smartphones and other devices.

Because of its diverse business interests, Rovi participates in a variety of industry standards-setting organizations and consortia. Additionally, Rovi was proud to participate as a member of the Video Programming Accessibility Advisory Committee ("VPAAC"), particularly Working Group 4 which was focused on user interfaces—the subject of the Notice of Proposed Rulemaking.<sup>2</sup>

Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act ("CVAA")<sup>3</sup> establishes requirements for the accessibility of certain classes of devices for persons with certain disabilities, and in the NPRM, the Commission proposes rules and seeks comment on several specific aspects of Sections 204 and 205 of the CVAA.

## **II. SCOPE OF SECTIONS 204 AND 205**

In the NPRM, the Commission seeks comment on the interpretation of the scope of Sections 204 and 205 of the CVAA, and in particular what sort of navigation device is included in the scope of Section 204, and what sort of navigation device is included in the scope of Section 205.<sup>4</sup>

### **A. SCOPE OF SECTION 205**

As an initial matter, the plain language of the CVAA is clear: Section 204 applies to apparatus, and apparatus "does not include a navigation device, as such term is defined in section

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<sup>2</sup> *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus*, Notice of Proposed Rulemaking, MB Docket No. 12-108, FCC 13-77 (rel. May 30, 2013) ("NPRM").

<sup>3</sup> Pub. L. No. 111-260, §204, 124 Stat. 2751 (2010). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

<sup>4</sup> *See generally* NPRM at III.A.

76.1200 of the Commission’s rules (47 CFR 76.1200).”<sup>5</sup> Section 205 applies to “navigation devices, (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations).”<sup>6</sup>

The term “navigation device” was used by Congress in 1996,<sup>7</sup> and defined by the Commission in 1998.<sup>8</sup> We agree with Commissioner Pai that “the plain language of the statute precludes us from narrowing section 205 to cover only navigation devices provided by MVPDs and expanding section 204 to include navigation devices sold at retail.”<sup>9</sup>

### **1. SECTION 205 OF THE CVAA NOT LIMITED TO LEASED DEVICES**

The Commission suggests that “the statutory language of Section 205 could be read to apply to navigation devices provided by MVPDs,” and finds several aspects of Section 205 that read on the traditional leased navigation device model, including an ongoing commercial relationship, “placing into service” language and other aspects.<sup>10</sup> We agree that Section 205 *does* apply in the case of a traditional leased navigation device model. However, we disagree that Section 205 should be limited to only MVPD-supplied navigation devices.

*First*, the statutory language is clear. Section 205 includes navigation devices and Section 204 does not. Congress was aware of the Commission’s definition of navigation devices—indeed, the CVAA points directly at the definition—and the intent is clear.

The statutory language is unequivocal, there can be no doubt that the text of the CVAA limits Section 205 to devices which are navigation devices under the commission’s rules, and that Section 204 is the inverse, devices which are not navigation devices. An aspirational reading of

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<sup>5</sup> 47 U.S.C. § 303(aa)(1); 47 U.S.C. § 303(aa)(4).

<sup>6</sup> 47 U.S.C. § 303(bb)(1).

<sup>7</sup> Pub. L. No. 104-104, §304, 110 Stat. 125 (1996).

<sup>8</sup> *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Report and Order, CS Docket No. 97-80, FCC 98-116 (rel. June 11, 1998) (adopting 47 C.F.R. § 76.1200(c) defining “Navigation Devices”).

<sup>9</sup> NPRM at p 49 (Statement of Commissioner Ajit Pai).

<sup>10</sup> NPRM at 8-13.

“navigation device” would seem to be contrary to the clear and plain language in the CVAA, which refers directly to the Commission’s definition of navigation device.

*Second*, any linguistic indications that Section 205 applies to MVPD leased devices does not signal a limitation on the scope of Section 205. It would be strange indeed to reject the plain language referring to the definition of a navigation device to adopt a contrary interpretation discovered by inferring intent from words like “entity,” “provide,” and “no additional charge.”

The NPRM discusses possible obstacles to implementing Section 205 to retail devices, including how to interpret “it provides,” “the entity providing the navigation device,” “at no additional charge,” and “placing into service.”<sup>11</sup> We do not believe there is any difficulty in interpreting these terms in a retail marketplace. When a consumer purchases a retail navigation device, she is being provided such a device by the manufacturer (generally via a middleman like a retailer); therefore, the manufacturer is the party responsible for compliance with Section 205. In such a case, the retail manufacturer must not place into service devices which are incapable of being made to comply with Section 205 after the effective date.<sup>12</sup> We admit that if an owner of a retail navigation device subject to Section 205 requests compliance with Section 205, the manufacturer is obligated to make the device compliant with Section 205 – this may be done by making *every* device compliant, or via a free software download, or by supplying the consumer with an appropriate peripheral device. The service provider linguistic bend in Section 205 proves no obstacle to implementing it properly for retail devices.

*Third*, the language of Section 205 can easily be applied to both retail and MVPD-leased situations. The Commission need only (1) the set effective date retail navigation devices to hinge on

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<sup>11</sup> See NPRM at 8-10.

<sup>12</sup> We admit the difficulty in determining a specific “placing into service” date for a specific retail device and suggest the Commission use manufacture date as the date placed into service for the purpose of retail devices. This is determinable and earlier than a sale date or install date, and attempting to determine when a specific device was placed into service is difficult as this is not information the manufacturer generally has.

manufacture date, and for leased navigation devices on the date placed into service, and (2) find that for retail navigation devices, the “entity providing” the device is the manufacturer.

## **2. NO SUPPORT IN THE CVAA FOR SECTION 204 TO NAVIGATION DEVICES**

Section 204 could hardly be clearer: “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).”<sup>13</sup> Whatever devices *are* included in Section 204, devices “such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems”<sup>14</sup> are not.

## **3. PARTY RESPONSIBLE FOR SECTION 205 COMPLIANCE**

Navigation devices are provided to consumers by virtue of a commercial transaction, either by leasing a navigation device from an MVPD, by purchasing a navigation device, or by purchasing software. In each case, there is a provider of the navigation device (an MVPD, a device manufacturer, or a software manufacturer).

Every hardware navigation device is comprised of both hardware (*e.g.*, the box itself) and software that runs on the hardware which provides consumer features like text menus and guides. There are, however, software products that are sold (or provided) without hardware, that operates on hardware the consumer already owns or leases.

The CVAA provides that for “navigation device features and functions ... delivered in software ... the requirements ... shall apply to the manufacturer of the software ... [and for features and functions] delivered in hardware ... the requirements ... shall apply to the manufacturer of the hardware.”<sup>15</sup> The Commission should interpret the statute such that a hardware navigation device product is both hardware and software, and a software-only navigation device product is software-

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<sup>13</sup> 47 U.S.C. § 303(aa)(4).

<sup>14</sup> 47 C.F.R. 76.1200(c).

<sup>15</sup> 47 U.S.C. § 303(bb)(3).

only, such that the entity providing (selling or leasing) the hardware and software, or software is responsible for the compliance of its product only.

Additionally, where a software product is designed for a particular hardware/software platform (like a PC or a specific set-top box architecture), and where the software depends on accessibility features of the platform, the compliance burden of the software-only product should be considered met if it properly utilizes the accessibility features of the platform. That is, if the platform's accessibility features fail to work properly, but the software product is designed and operating properly, then the burden of compliance has not been met by the platform (*e.g.*, hardware) manufacturer.

Finally, in the case where a third party provides a navigation device product or application which accesses MVPD content, the Commission should not require program and guide information to be provided to such devices. Rovi licenses such proprietary data to MVPDs and others, and expends significant resources to acquire, organize, develop and describe programs and program information. This creative work is protected by copyright and licensed (with certain limits) to various parties. On the other hand, requiring supply of cooperative factual data, such as EIDR data, to third-party navigation devices would both enable accessible user interfaces in third-party devices and foster competition and innovation in both accessible interfaces specifically and navigation devices broadly.

#### **B. SCOPE OF SECTION 204**

As the Commission points out, under the plain reading of Section 204, "it is possible that the only devices that would be covered by Section 204 would be removable media players, such as DVD and Blu-ray players."<sup>16</sup> While we do not believe that the non-navigation devices that are designed to receive or play back video programming transmitted in digital format simultaneously with sound is limited to those two classes of products, it is immaterial.

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<sup>16</sup> NPRM at 16.

Congress explicitly made requirements for navigation devices, and as more devices are navigation devices as described in Section 76.1200(c) of the Commission’s rules, more devices fall under Section 205. This is precisely as the CVAA was explicitly drafted.

### **III. FUNCTIONS THAT MUST BE MADE ACCESSIBLE**

#### **A. APPROPRIATE FUNCTIONS**

Section 204 of the CVAA requires that “appropriate built-in apparatus functions” be “accessible to and usable by individuals who are blind or visually impaired.”<sup>17</sup> The *VPAAC Second Report: User Interfaces* identifies 11 essential functions that must be accessible in order for individuals that are blind or visually impaired,<sup>18</sup> and describes that list of 11 essential functions to be “*the set of appropriate built-in functions*” described in Section 204.<sup>19</sup>

The Commission tentatively concludes that the 11 essential functions are only “representative,” and “not an exhaustive list,” and are merely examples.<sup>20</sup> Such a conclusion is contrary to the VPAAC’s recommendations, would leave apparatus manufacturers guessing what other functions are “appropriate,” and will stifle innovation—to the detriment of both disabled consumers and others. Some functions may not be made accessible, but so long as those functions are not necessary for the apparatus function to be realized in an accessible way those functions are not appropriate for accessibility.

#### **B. DIFFERENCES BETWEEN SECTION 204 AND SECTION 205**

Similarly, the functions that must be accessible under Section 205 are different from those that must be accessible under Section 204. Congress intentionally envisioned a broader scope for Section 204 devices (*i.e.*, includes appropriate functions) and a narrower scope for Section 205

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<sup>17</sup> 47 U.S.C. §303(aa)(1).

<sup>18</sup> 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, April 9, 2012, available at <http://apps.fcc.gov/ecfs/document/view?id=7021913531> (“*VPAAC Second Report: User Interfaces*”) at 8.

<sup>19</sup> *Id.* at 7 (emphasis supplied).

<sup>20</sup> NPRM at 32.

devices. Under Section 205, navigation devices with text menus and guides for the display or selection of multichannel video programming must make those text menus and guides accessible, if achievable.<sup>21</sup> Section 205 is thereby narrower than Section 204, and does not require accessibility of appropriate functions (such as the 11 functions identified by the VPAAC as “essential functions” with respect to Section 204).

### **C. VIDEO DESCRIPTION SHOULD BE INCLUDED IN SECTION 205 “ACCESSIBILITY FEATURES”**

The Commission describes one of the differences between Section 204 and Section 205 as including “closed captioning and video description”<sup>22</sup> in Section 204, and “closed captioning, or accessibility features”<sup>23</sup> in section 205. We believe the Commission should reasonably interpret “or accessibility features” in Section 205 as including video description, and that any regulation with respect to Section 205 “closed captioning, or accessibility features”<sup>24</sup> should include regulation with respect to both closed captioning and video description.

### **IV. REASONABLY COMPARABLE TO A BUTTON, KEY OR ICON**

The Commission seeks comment on whether the most effective way to implement the “reasonably comparable to a button, key or icon” language would be to require the closed captioning feature to be activated in a single step, or whether to require dedicated physical buttons for captions (and video description) if there are dedicated physical buttons for channel selection and volume.<sup>25</sup> We do not believe that either of these are the most effective way to implement this requirement.

First, we note that in certain devices, making any adjustments to volume, brightness, video stream selection, etc., involves at least two steps. For example, a touch-screen tablet or smartphone application: in order to adjust nearly anything requires a first action to invoke the onscreen user

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<sup>21</sup> 47 U.S.C. § 303(bb)(1).

<sup>22</sup> 47 U.S.C. § 303(aa)(2).

<sup>23</sup> 47 U.S.C. § 303(bb)(2); *see also* NPRM at 45.

<sup>24</sup> 47 U.S.C. § 303(bb)(2).

<sup>25</sup> NPRM at 43.

interface controls, and a second action to make even the most top-level adjustments. Also, consider a voice-controlled device, where a first action is necessary to invoke the audio control processing, and a second action to make even the most top-level adjustments. Second, limiting accessibility functions to structures that may be described as a single-step limits the ways that implementers may innovate user interfaces in general and accessibility features in particular.

Additionally, tying requirements for captions and video description physical buttons to volume or channel selection buttons becomes very problematic when considering devices like touchscreen tablets and smartphones which have as few as three buttons (including two volume buttons) and yet are navigation devices. Such devices in the alternative the Commission proposes could be required to have as many as twice as many buttons as it would otherwise have – including dedicated, single-purpose buttons which would be rarely used.

We endorse the NCTA proposal elucidated in the VPAAC report, which requires a mechanism comparable in accessibility to the physical buttons.<sup>26</sup> This both satisfies the statutory requirements for “reasonably comparable,” and avoids shackling manufacturers to specific, limited solutions like single step or physical buttons when mechanisms that are comparably accessible are available.

## **V. OTHER MATTERS**

### **A. PERIPHERAL DEVICES AND ALTERNATIVE MEANS OF COMPLIANCE**

We agree with Congress and the Commission that those parties electing to comply with Section 205 by supplying software, peripheral devices, or other separate, additional technology should be required to provide the same functions as a built-in accessibility solution, and that the entity providing the navigation device should be responsible for providing the peripheral device, software or other technology.

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<sup>26</sup> See VPAAC report at App. A.

Similarly, we agree with the Commission's tentative conclusion that manufacturers electing alternative means of compliance, such as those provided for in Section 204, should be permitted to either request a Commission determination that the proposed alternate means satisfies the requirements, or, at the manufacturer's option, to implement an alternative means and argue that such alternatives meet the requirements during a complaint or enforcement process.

#### **B. SMALL ENTITY EXEMPTION**

We note that Congress has given the Commission authority to exempt small cable systems serving 20,000 or fewer subscribers from the requirements of Section 205. We encourage the Commission to make such an exemption. As a practical matter, such smaller operators have little or no influence on the design and manufacture of navigation devices; therefore, they have limited means to assure that they are in compliance with Section 205 requirements. Moreover, because they use commodity navigation devices, compliance is likely in any case.

#### **C. EFFECTIVE DATE**

Section 205 of the CVAA requires that the Commission adopt regulations for accessibility of closed captions (and descriptive video) that are effective no earlier than two years after the adoption of regulations, and adopt regulations for accessibility of the text menus and guides that are effective no earlier than three years after the adoption of regulations.<sup>27</sup>

Product cycles of navigation devices and similar software and electronics are typically 18 months or longer, and implementation of these requirements will likely require two consecutive product cycles. Navigation device hardware vendors depend on software vendors, like Rovi, to supply components necessary to complete and test their products; and similarly, Rovi depends on other software providers to develop, build and test our software products.

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<sup>27</sup> 47 U.S.C. §303(bb)(6)(A).

Rovi, our suppliers, and our customers have all begun initial work on products and software to support the CVAA-required functions. However, such changes are significant and will require significant time to implement.

Therefore, as a result of the cascade of dependencies which are necessary to implement these requirements, the Commission should make allowances for two consecutive 18-month product cycles and set the effective dates for both requirements to be three years after adoption of the regulations.

## **VI. CONCLUSION**

For the above reasons, the Commission should adopt rules that apply Section 204 to apparatus that are not navigation devices and Section 205 to navigation devices. The Commission should also adopt rules that identify the VPAAC's recommended 11 essential functions as an exhaustive list of appropriate functions under Section 204 (in 47 U.S.C. § 303(aa)(1)), and limits Section 205 to text menus and guides (in 47 U.S.C. § 303(bb)(1)). The Commission should reject the "single step" criteria for "reasonably comparable to a button, key or icon" and should instead require a mechanism comparable in accessibility to physical buttons, when physical buttons are provided. The rules should specify that parties that elect to comply with Section 205 by supplying separate technology should be required to provide the technology, and the technology should be required to provide the same functions as an integrated solution. The Commission should exempt small cable systems from the requirements of Section 205, and should set an effective date of the Section 205 regulations to be three years after the adoption of the final rules.

Respectfully submitted,

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Executive Vice President and General Counsel  
Rovi Corporation  
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Santa Clara, CA 95050

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