Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Danielle Coffey
Vice President, Government Affairs

Mark Uncapher
Director, Regulatory and Government Affairs

Brian Scarpelli
Senior Manager, Government Affairs

TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1320 Court House Road
Suite 200
Arlington, VA 22201
(703) 907-7700

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I. INTRODUCTION AND SUMMARY

The Telecommunications Industry Association[1] ("TIA") submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket.[2] In the NPRM, the Commission

[1] TIA is a Washington, DC-based international trade association representing approximately 500 global information and communications technology ("ICT") manufacturers, vendors, and suppliers. TIA represents the global ICT industry through standards development, advocacy, business opportunities, market intelligence and networking. TIA's member companies manufacture or supply the products and services used in global communications across all technology platforms. Since 1924, TIA has been enhancing the business environment for broadband, mobile wireless, information technology, networks, cable, satellite and unified communications. Members' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment and entertainment. TIA is accredited by the American National Standards Institute ("ANSI").

TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. Please see TIA's 2013 Policy Playbook, which provides an overview of the ICT market, technologies and policies that drive innovation and investment. See http://www.tiaonline.org/policy/tia-2013-playbook.

[2] *See Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Notice of Proposed Rulemaking, FCC 13-77 (rel. May 30, 2013).

addresses implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act.[3] Representing the information and communications technology manufacturer and vendor community, TIA supported the passage of the CVAA and TIA also co-chaired the Emergency Access Advisory Committee, the Commission's CVAA-created Federal advisory committee that focuses on matters pertaining to next-generation 911 access for persons with disabilities.[4] We commend the Commission for initiating this proceeding to help those who are blind or visually impaired realize accessible user interfaces in both digital apparatus and navigation devices.

In our comments, TIA notes that the Commission should ensure that its scope interpretations of Sections 204 and 205 should fully reflect Congressional intent. Importantly, TIA believes that the Commission should not ignore the exclusion of "navigational devices" under Section 204. We also strongly believe that manufacturer design intent should determine the applicability of Sections 204 or 205 to a given device.

TIA also addresses in its comments the appropriate functions that should be made accessible under Section 204. The accessible functions under Section 204 should be limited to those designated by the VPAAC, and those same functions should be implemented as safe harbors for Section 204 compliance. Furthermore, the required Section 204 accessible features should be limited to the video programming features of a "digital apparatus." Finally, we urge that the Commission affirm that customer-downloaded and installed software from third

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[3] 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).

[4] *See* http://www.fcc.gov/encyclopedia/emergency-access-advisory-committee-eaac.

parties, outside of the control of the manufacturer, is not the responsibility of manufacturers under either Sections 204 or 205.

TIA also notes for the Commission that it should avoid mandating a single step activation of the closed captioning and video description features. We do not believe that Section 204 nor the VPAAC provide the Commission with the authority to do this, and that it would not be in line with the practical reality very few buttons, keys, and icons use the "single step" today.

Lastly, TIA urges a three-year phase in period for these rules, commencing after their publication in the Federal Register. This would create parity between Sections 205 and 204 and would reflect that Section 204 devices are generally multi-functional, adding to the complexity of these devices.

II. THE COMMISSION SHOULD ENSURE THAT ITS SCOPE INTERPRETATIONS FOR SECTIONS 204 AND 205 REFLECT CONGRESSIONAL INTENT

Sections 204 and 205 of the CVAA are important pieces of the puzzle for improving accessibility for those with auditory or visual disabilities. The Commission should ensure that the incentives for innovation and investment in game-changing ICT products are fully incorporated into its regulations. TIA believes that the Commission can accomplish this by implementing the full text of Section 204, and by confirming that manufacturers subject to Sections 204 and 205 are only responsible for the capabilities designed into a device by that respective manufacturer.

a. The Commission Should Fully Reflect Congressional Intent in its Interpretation of Section 204

In the NPRM, the Commission addresses the scope of Sections 204 and 205, and how these two sections interplay with one another.[5] Section 204 applies to "digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol."[6] Significantly, the Commission goes on to suggest that Section 204 include the same "broad meaning" as the Commission gave to the scope of Section 203.[7]

As the Commission notes in the NPRM, there is very little legislative history on the definition of how broad Section 204 was intended to be, aside from the direction in the law from Congress to have the "digital apparatus" definition exclude those which are "navigational devices" per Section 76.1200(c)[8] and the Commission's already-established definitions based on this which are noted in the NPRM as including "televisions, personal computers, cable modems, and VCRs."[9] TIA does not agree with the point of view that Congress intended for the "navigation devices" exception in Section 204 to "largely nullify" Section 204; rather, this

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[5] NRPM at pars. 6-29.

[6] 47 U.S.C. § 303(aa)(1).

[7] NPRM at 15, 22; *See also* Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 27 FCC Rcd 787, 839-43, ¶ 93 (2012).

[8] 47 U.S.C. § 303(aa)(4).

[9] See NPRM at 15.

limitation was intended to ensure that the scope was appropriately tailored. For this reason TIA recommends that the Commission should not minimize the gravity of this exception.

TIA recognizes that there are remaining important issues to be determined regarding the scoping of Sections 204 and 205 as they apply to devices, and how these Sections relate to one another. These determinations require intense consultations among TIA's diverse membership in the areas of law, policy, and technological feasibility. For these reasons, past the important point noted above, TIA reserves judgment on remaining scoping determinations of Sections 204 and 205 at this time.

b. Manufacturer Design Intent Should Determine Device Applicability to Either Sections 204 or 205

In the NPRM, the Commission also proposes to interpret the term "designed to" for Section 204 purposes the same way that the Commission interpreted it under Section 203.[10] It is the case that many devices can be modified by customers after the time of sale with increasing ease, and beyond the control of the manufacturer. Manufacturers should not be held responsible for these post-market changes that are outside of their control. Manufacturers need to have an expectation of certainty at the time of design and production that the device will or will not be subject to Sections 204 or 205. Therefore TIA supports the Commission evaluating applicability of Sections 204 and 205 to devices using the design intent of the manufacturer.

[10] *See* NPRM at ¶ 29.

III. THE COMMISSION CAN BEST ENSURE ACCESSIBILITY TO ESSENTIAL FUNCTIONS BY APPROPRIATELY LIMITING THESE REQUIREMENTS, EMBRACING TECHNOLOGY NEUTRAL REQUIREMENTS, AND BY USING SAFE HARBORS

The Commission also addresses the functions that should be made accessible under Section 204, and tentatively concludes that the "appropriate" functions that must be made accessible under Section 204 include all user functions of the device, but that such user functions do not include the debugging/diagnostic functions.[11] TIA recommends that the Commission limit its requirements to the VPAAC's essential functions[12], and that these essential functions be implemented as safe harbors for compliance. TIA believes this approach will reflect Congressional intent, incorporate technology neutrality, and will best ensure that manufacturers have the flexibility to innovate and to provide accessible solutions.

a. Accessible Functions under Section 204 Should be Limited to those Designated by the VPAAC

The Commission proposes that the appropriate functions under Section 204 include "all user functions of the device."[13] After careful evaluation, TIA believes that such a sweeping interpretation by the Commission could not be justified unless the phrase "all functions" were in the law – such is not the case. Because this comprehensive phrasing is absent, TIA does not agree that Congress intended for "all functions" to be synonymous with their use of the word

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[11] NPRM at 30.

[12] Provide list of 11 functions?

[13] NPRM at 30.

"appropriate." In short, the discretion afforded to the Commission by including the word "appropriate" does not in our view provide adequate justification to include "all" functions.

Related to this interpretation, the Commission also requests input on whether there are any other essential functions that are not included in the 11 essential functions listed in the VPAAC Second Report, "such as V-Chip and other parental controls, that may provide additional guidance to manufacturers."[14] TIA views the statutory language of Section 204 as not permitting the addition of further essential functions on top of the VPAAC's by the Commission. TIA urges the Commission to give deference to the VPAAC on this list, especially since the VPAAC industry and consumer members achieved consensus on this list. TIA urges the better course is to support the consensus findings and recommendations of the VPAAC, acknowledging that the VPAAC members are respected subject matter experts.[15]

b. The VPAAC's Section 204 Functions Should be Implemented as Safe Harbors for Section 204 Compliance

TIA supports the Commission deferring to the VPAAC Second Report where 11 "essential functions" are identified as "the set of appropriate built-in apparatus functions" referred to in Section 204,[16] where these are present in a device.[17] The use of these essential functions as defined by the VPAAC's Second Report should be implemented as safe harbors for Section 204

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[14] NPRM at 32.

[15] *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 Report").

[16] See VPAAC Report at 7-8.

[17] Note: Some devices may not provide all of the 11 functions. For example, "display configuration info" is not applicable to a device that lacks a display.

compliance. Safe harbors are an effective tool to ensure consistency and transparency for entities seeking compliance while maintaining flexibility and technology neutrality in regulations.

In the case of Section 204 functions for accessibility, allowing for manufacturers to ensure compliance when they have found a way to make the VPAAC-recommended features accessible will provide much-needed certainty, while also providing the flexibility to deliver accessibility solutions to consumers in other ways as consumer expectations and technology changes over time. We encourage the Commission to utilize the safe harbor tool for accessibility functions under Sections 204 and 205.

c. Required Section 204 Accessible Functions should be Limited to the Video Programming Features of a Digital Apparatus

Key to providing the compliance certainty needed by manufacturers will be the Commission's clarifying the aspects of digital apparatus that will be subject to Section 204 in the event that a device is multi-functional. Because it is clear in Section 204 that requirements under this section be limited to the interface functions used to play back video programming, we believe that it is important for the Commission to clarify that *non*-video programming features are not subject to Section 204. For example, devices such as PCs, monitors, tablets, mobile devices, and gaming consoles have numerous features which are not video programming-related, and therefore should not be subject to Section 204. TIA urges the Commission to make this clear to manufacturers in its Section 204 rules.

d. The Commission Should Affirm that Customer-Downloaded and Installed Software from Third Parties, Outside of the Control of the Manufacturer, is not the Responsibility of Manufacturers under Sections 204 and 205

The Commission also requests input on the extent to which apparatus manufacturers will need channel and program information (or other information necessary to select programming) from third-party video programming distributors to meet Section 204's requirement that "on-screen text menus or other visual indicators built in to the digital apparatus" be "accompanied by audio that is either integrated or peripheral to the apparatus."[18] TIA believes that, as with previous CVAA-themed proceedings where this issue arose,[19] manufacturers should only be responsible for software which is pre-installed on the apparatus, and for manufacturer-provided upgrades. TIA urges the Commission to clarify that customer-downloaded and installed software from third parties is outside of the control of the manufacturer. Third party vendors alone have the discretion over the accessibility features of their software. Taking this approach would eliminate a barrier to investment in new products, and would also lend to consistency across rules implementing various sections of the CVAA, easing compliance for manufacturers.

Section 205 further specifies that for "(3) that, with respect to navigation device features and functions -- (A) delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software; and (B) delivered in hardware, the

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[18] NPRM at 33.

[19] *IP Closed Captioning Order*, 27 FCC Rcd at 840, ¶ 93 (citing *ACS Order*, 26 FCC Rcd 14557, 14582 at ¶ 69 (2011).

requirements set forth in this subsection shall apply to the manufacturer of such hardware."[20] The Commission should ensure that this aspect of Section 205 is clear in its rules.

IV. THE COMMISSION SHOULD NOT MANDATE SINGLE STEP ACTIVATION OF THE CLOSED CAPTIONING AND VIDEO DESCRIPTION FEATURES

The Commission requests input on whether the most effective way to implement the requirement in Sections 204 and 205 that closed captioning be activated through a mechanism reasonably comparable to a button, key, or icon would be to require the closed captioning feature to be activated in a single step.[21] Further, the Commission proposes to prescribe how and when closed captioning and video description options are presented to users.[22] TIA believes that the Commission should not adopt such rigid requirements, and should instead allow for innovative solutions that can include "alternate means" such as voice activation.

First, we note that Section 204 does not give the Commission or the VPAAC the authority to mandate product design, including single-step activation of closed captioning and video description nor does Section 204 give the Commission authority to regulate when and how this information is first presented to the consumer. Congress communicated its intent for alternate means of activation being allowed when it stated that the "mechanism [be]

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[20] 47 U.S.C. § 303(bb)(3)

[21] NPRM at 43-44.

[22] *Id*.

reasonably comparable to a button, key or icon,"[23] and by specifically allowing for "alternate means" of compliance.[24]

In the view of TIA, this approach by Congress is in line with practical realities. Very few buttons, keys, and icons use a "single step" today. To prescribe single step activation would disregard technology neutral principles, alternative solutions, and would further inhibit innovative approaches to activating these important features. In addition, prescribing the "how" and "when" of when closed captioning and video description information is first presented to the user would remove the ability of manufacturers to innovate in their approach to presenting this information given that some users may have no need for closed captioning and video description features, particularly in multi-functioning devices.

V. THE COMMISSION SHOULD ALLOW A THREE-YEAR PHASING IN FOR DEVICES SUBJECT TO SECTION 204

Finally, in the NPRM the Commission proposes to make its rules regarding digital apparatus effective two years after publication of final rules in the Federal Register, consistent with the time frame given for compliance with both the ACS and IP closed captioning rules adopted pursuant to the CVAA.[25]

TIA urges the Commission to allow for three years after publication of final rules in the Federal Register. While Section 205 devices are given "not less than 3 years after the adoption

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[23] 47 U.S.C. § 303(aa)(3)

[24] Pub. L. No. 111-260, § 204(c), 124 Stat. 2751, 2774 (2010).

[25] NPRM at 58.

of such regulations to begin placing in service devices that comply with the requirements,"[26] we expect the technical and operational issues faced by manufacturers of digital apparatus' subject to Section 204 to meet or surpass those faced by Section 205. This is primarily due to the reality that Section 204 devices are generally multi-functional, adding to the complexity of the device.

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

VI. CONCLUSION

For the foregoing reasons, TIA urges the Commission to take into consideration its views in this proceeding.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

By: */s/ Danielle Coffey*

Danielle Coffey
Vice President, Government Affairs

Brian Scarpelli
Manager, Government Affairs

TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1320 Court House Road
Suite 200
Arlington, VA 22201
(703) 907-7700

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