



July 29, 2013

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association Notice of Ex Parte Presentation – Accessibility of User Interfaces, and Video Programming Guides and Menus; MB Docket No. 12-108

Dear Ms. Dortch:

On July 25, 2013, Ross Lieberman, Vice President of Government Affairs, American Cable Association (“ACA”), Marc W. Cohen, Executive Vice President of Sales, Evolution Digital, and Elvis Stumbergs along with the undersigned, counsel to ACA, met with Michelle Carey, Deputy Bureau Chief, and Alison Neplokh, Chief Engineer, along with Evan Baranoff (by phone), Adam Copeland, Maria Mullarkey, Brendan Murray, Jeffrey Neumann, and Raelynn Remy of the Media Bureau; and Karen Strauss, Deputy Bureau Chief, along with Rosaline Crawford, and Eliot Greenwald of the Consumer and Governmental Affairs Bureau to discuss ACA’s views on the above-captioned rulemaking regarding implementation of accessible programming user guides for smaller cable operators and other multichannel video programming distributors (“MVPDs”).¹ The discussion was consistent with, and expanded upon, ACA’s advocacy to set the compliance deadline for CVAA Section 205 requirements for smaller and mid-sized cable operators later than the deadline for the largest cable operators, and to exempt small cable systems with 20,000 or fewer subscribers.²

ACA offered further detail regarding the technical complexities, costs, and timing involved in smaller cable operators rendering program guides and menus audibly accessible on set-top boxes (“STBs”), a type of navigation device subject to CVAA Section 205 requirements, in the near-term. Mr. Cohen, in particular, offered his views based on over 30 years of experience in the cable television industry, including as an owner of a smaller cable operator and currently working for a company that produces hardware for cable operators. Consistent with the points raised in ACA’s comments, Mr. Cohen agreed that smaller cable operators would face challenges in offering audibly accessible set-top boxes.³

First, smaller cable operators typically must wait at least a couple of years *after* the large operators first deploy new technology before it becomes feasible (i.e., available and affordable) for

¹ See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Notice of Proposed Rulemaking, MB Docket No. 12-108, 28 FCC Rcd 8506 (2013) (“NPRM”).

² See Comments of American Cable Association at 6-13 (“ACA Comments”); Twenty-First Century Communications and Video Accessibility Act, Pub. L. 111–260, Oct. 8, 2010, 124 Stat. 2775, § 205 (“CVAA”).

³ See ACA Comments at 6-9.

them to implement it on their systems.⁴ The needs of large operators drive hardware manufacturers' development efforts and these operators, who have research and development budgets and scale, are the first to gain access to new technology. Given their limited size and resources, smaller operators have no direct influence on the development of new technologies and must wait for commercial mass market solutions from their vendors. Generally, the clock only starts for smaller operators to gain access to new technologies after larger operators have already started deploying it. It can take several years for technology that is developed for large operators to be modified and made available for smaller operators. The Commission's policies should recognize this technology lag so as to avoid imposing potentially impossible technical mandates on smaller operators by forcing them to comply with regulations before compliant products are even feasible for them to purchase.

Second, even after new hardware and/or software becomes available from vendors at an affordable price, smaller cable operators will not be able to fulfill an accessible STB mandate simply by providing a customer with an off-the-shelf third-party accessible device. Smaller operators will need time to ensure compatibility of these accessible devices with their cable system's existing variety of hardware, firmware, and software. The cable video programming distribution ecosystem contains complex interactions between various infrastructure components, where the specific equipment in each cable system may dramatically vary based on the manufacturer, the model, the firmware, and software, and an operator must consider the impact that new customer devices and/or software would have on the existing network.⁵

Regardless of the solution, operators would first need to wait for the necessary hardware or software to become available and then conduct extensive testing, at a minimum, to ensure system compatibility with the new accessible consumer product and a seamless consumer experience. To the extent that an accessible consumer device or a new accessible software solution is not compatible with their existing system's components, the operator would likely need to upgrade and/or replace existing equipment, software, and firmware. Depending on the modification required, this can be complicated, costly, and time consuming. The fact that smaller operators typically have more legacy equipment and rely upon older versions of software and firmware makes this process even more burdensome than for larger operators who may have more upgraded systems. Smaller operators accordingly need, above all else, sufficient time to ensure that they can review mature technology options compatible with their systems and apply upgrades when appropriate.

These factors, in conjunction with the arguments advanced in ACA's comments, fully justify the Commission granting ACA's requested relief for small and mid-size operators.⁶

Finally, meeting participants discussed whether CVAA Section 205 accessible navigation device requirements would apply to all-analog cable systems that either do not provide STBs to their customers, or whose systems do not have interactive user guides.⁷

⁴ See ACA Comments at 10-11 & n.4 (explaining how the Commission has "repeatedly recognized that [smaller and mid-sized cable operators] do not drive equipment or software markets").

⁵ See ACA Comments at 7-8.

⁶ See ACA Comments at 6 (the Commission has authority to exempt small systems and defer compliance for smaller and mid-sized operators); 6-9 (uncertainty about, and complexity of solutions, leads to need for exemptions and flexible implementation timeframes); 9-10 (small cable system exemption is justified); 10-13 (deferred compliance for smaller and mid-sized operators is justified).

⁷ See CVAA, § 205.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,



Barbara Esbin

cc (via email): Michelle Carey
Alison Neplokh
Evan Baranoff
Adam Copeland
Maria Mullarkey
Brendan Murray
Jeffrey Neumann
Raelynn Remy
Karen Strauss
Rosaline Crawford
Eliot Greenwald