

August 1, 2013

VIA ELECTRONIC FILING

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

RE: Notice of *Ex Parte* Meeting
MB Docket No. 12-108

Dear Ms. Dortch:

On Tuesday, July 30, 2013, Jim House of the Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Blake Reid of the Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law (TLPC), and Andrew Phillips of the National Association for the Deaf (NAD) (collectively, “the Consumer Groups”) met with Adam Copeland, Maria Mullarkey, Brendan Murray, Jeffrey Neumann, and Raelynn Remy of the Media Bureau (MB) and Gregory Hlibok, Rosaline Crawford, Elaine Gardner, Eliot Greenwald, and Suzy Rosen Singleton of the Consumer and Governmental Affairs Bureau's Disability Rights Office (DRO) to discuss the current rulemaking on the accessibility of user interfaces, and video programming guides and menus.¹

At the meeting, the Consumer Groups reiterated points discussed in the Consumer Groups’ comments in the NPRM. The Consumer Groups explained that it would be inappropriate to make a consumer file a request before receiving access to an MVPD-provided navigation devices. The “upon request” language of Section 205(a) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) is not referenced in amended Section 303(bb)(2) of the Communications Act of 1934, the subsection of the statute that requires navigation devices to make closed captioning functionality accessible through the provision of a mechanism reasonably comparable to a button, key, or icon. Accordingly, the Commission should only permit MVPDs to provide accessibility upon request in connection with the audible accessibility requirements of Section 303(bb)(1), which specifically includes an “upon request” provision. Construing this requirement narrowly is consistent with the CVAA’s broad goals of making video programming and the apparatuses used to view it accessible to all Americans. People who are deaf or hard of hearing need to access the closed captioning control not only on their own apparatuses, but on those owned by friends or family or located in public places, and those apparatuses must be accessible too.

¹ *In the Matter of Accessibility of User Interfaces, and Video Guides and Menus*, Notice of Proposed Rulemaking, MB Dkt. No. 12-108 (rel. May 30, 2013) (“NPRM”).

The Consumer Groups explained that the Commission's approach to defining the scope of Sections 204 and 205 will have a significant impact on consumers who are deaf or hard of hearing consumers if those consumers must request accessibility to Section 205 devices. Moreover, because MVPD-provided apparatuses, applications, plug-ins, and other software must render or pass through captions pursuant to Section 202 and 203 of the CVAA, it would be at odds with the clear intent of Congress in enacting the CVAA to exempt MVPDs from enabling universal access to those required captions.

The Consumer Groups also discussed the importance of making sure that the buttons, keys, and icons used to turn closed captions on and off are actually accessible to deaf and hard of hearing people. We expressed concern that the Commission's proposed "single step" standard is too vague and suggest that the Commission instead:

“[R]equire the closed captioning control to be activated in a single action from all of the same locations from which the volume can be adjusted in a single action, or if the apparatus lacks a volume control, from all of the same locations where the apparatus's other primary controls, such as play/pause or fast-forward and rewind buttons, are located.”

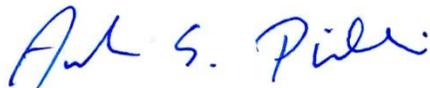
Moreover, we believe that closed captioning configuration settings must be accessible at the first level of a menu of a digital apparatus or navigation device. The ability to configure settings such as caption size, color, and font is critical for captions to serve their intended purpose, particularly for viewers who also have visual impairments, and cannot be hidden from users in multiple layers of menus or confusing configuration screens. It would be counter-intuitive and inconsistent with the CVAA for the Commission not to require *access* to caption configuration settings after requiring they be provided in the IP Closed Captioning Report and Order.²

Finally, the Consumer Groups opposed the suggestion by industry representatives that programmable or "wildcard" buttons on apparatuses should be used to provide users the ability turn closed captions on and off—a proposition completely at odds with the plain language of Sections 204 and 205 of the CVAA, which do not permit an apparatus to be delivered to the user without a *fully realized* mechanism comparable to a button, key, or icon able to activate or deactivate closed captions. Moreover, people who are deaf and hard of hearing must often utilize apparatuses that they do not own, such as televisions and set-top boxes in hotels or at the homes of friends and family members. Requiring a viewer to undertake a complex and counterintuitive programming operation (or guess which button had been previously programmed) would effectively ignore the plain requirements of Section 204 and Section 205. The CVAA's mandate is clear: **covered apparatuses must have a dedicated button, key, or icon** that can be easily identified. Just as no apparatus ships with volume buttons that can only be enabled by completely reprogramming the apparatus, no apparatus should ship without a readily accessible closed caption control.

² *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Dkt. No. 11-154 at ¶ 111-13 (rel. Jan. 13, 2012) ("*IP Closed Captioning Report and Order*").

We also raised concerns about a blanket exemption for small cable providers, noting that it would be unfair and inconsistent with the intent of the CVAA to punish viewers who are deaf or hard of hearing, many of whom live in rural or other underserved areas, simply because they do not have access to a larger cable provider. We also noted that many small cable providers source their set-top boxes and other apparatuses from the same manufacturers as larger cable providers, and that exempting those providers would simply perpetuate a market for poorly-designed, inaccessible apparatuses.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew S. Phillips". The signature is written in a cursive, flowing style.

Andrew S. Phillips, Esq.
Policy Counsel

cc: Adam Copeland, MB
Maria Mullarkey, MB
Brendan Murray, MB
Jeffrey Neumann, MB
Raelynn Remy, MB
Gregory Hlibok, DRO
Rosaline Crawford, DRO
Elaine Gardner, DRO
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