

**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)

**REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.² The NPRM initiates implementation of provisions of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) requiring that user interfaces on digital apparatus and navigation devices used to view video programming be accessible to and usable by individuals who are blind or visually impaired.³ The law also stipulates that multichannel video programming distributors (“MVPDs”) must make such navigation devices available upon reasonable request and at no additional charge.⁴

The NPRM proposes to require that at least 11 essential functions, identified by the Video Programming Accessibility Advisory Committee (“VPAAC”) that examined this topic,⁵

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite and/or long-distance services, as well.

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

³ NPRM, ¶1.

⁴ *Id.*, ¶9.

⁵ The 11 essential functions identified by VPAAC are: (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. *Id.*, ¶31 (citations omitted).

be made accessible to and usable by individuals who are blind or visually impaired.⁶ In accordance with the statute, the NPRM does not specify any technical standards for making those user functions accessible.⁷

While NTCA supports reasonable efforts to make video programming accessible to the visually impaired, the record in this proceeding demonstrates that an exemption for MVPDs serving 20,000 or fewer subscribers as provided by statute is warranted in this instance, and exempting even larger providers would also be justified and permitted by law. In addition, deferred compliance is warranted for other MVPDs, excepting only the largest, until such time as the Commission is able to determine based upon a complete record whether compliance is in fact achievable for other providers.

II. AN EXEMPTION FOR SMALL MVPDS IS WARRANTED

The NPRM notes that Congress granted the Commission explicit authority to exempt MVPDs serving 20,000 subscribers or fewer from the CVAA requirements as they relate to navigation devices.⁸ The record demonstrates that this exemption is warranted. This is due in large part to numerous technical factors that must be taken into account.

As the American Cable Association (“ACA”) states, “[d]evelopment of the mass-market commercial technology and equipment necessary to render program guides and menus audibly accessible appears to be in the early stages of what will undoubtedly be an exceedingly complex undertaking.”⁹ ACA goes on to illustrate that the Commission must consider a wide array of technologies and platforms that are deployed by various MVPDs, and that even within individual small MVPDs, it is not uncommon for different kinds of equipment and technologies to be

⁶ *Id.*, ¶36.

⁷ *Id.*, ¶1.

⁸ *Id.*, ¶56.

⁹ ACA, p. 7.

deployed in various parts of their service territories.¹⁰ Furthermore, ACA points out that there are varying life cycles and upgrade schedules for the hardware and software needed to provide service.¹¹

Similarly, the National Cable & Telecommunications Association (“National Cable”) correctly observes that “[a]n exemption is especially warranted here since no commercially available solution to provide accessibility has yet been deployed,” and therefore the costs are unknown at this time.¹² National Cable continues:

And even if a solution is developed for one type of system, smaller systems may not benefit from these developments. If, for example, an accessible set-top box is developed, small systems would only be able to use such a solution if they use similar headend equipment, software and set-top boxes. Even then, the costs to small systems would greatly exceed those of larger systems in relative terms. The Commission is well aware that the different economics faced by systems of smaller size justify different regulatory treatment and it appropriately has relieved them of regulatory obligations in a variety of other settings.¹³

The level of complication that ACA and National Cable refer to is even more pronounced for MVPDs affiliated with rural local exchange carriers (“RLECs”). These small companies have not only deployed a variety of digital and analog coaxial video systems, but also provide Internet protocol television (“IPTV”) service via copper-based digital subscriber line (DSL), Ethernet, and fiber-to-the-home technologies.¹⁴ A number also operate as resellers of satellite services. Depending on local market circumstances, it is not unusual for the same company to utilize two or more very different technological platforms to provide video services in different

¹⁰ ACA, pp. 7-8.

¹¹ *Id.*

¹² National Cable, p. 17.

¹³ *Id.*, pp. 17-18, citing *In re Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fifth Report & Order, 27 FCC Rcd 6529 ¶¶20-22 (2012) (“finding that small cable operators face financial and technological constraints that justify an exemption from certain regulatory requirements”).

¹⁴ Adding to potential complications, some RLEC-affiliated broadband providers, working in tandem with affiliated MVPDs, offer discount packages of data and video, and may provide subscribers with various Internet-connected hardware that is available at retail (such as Internet-enabled Blu-Ray or set-top boxes). Some of these devices may in the future have the ability to download applications that could potentially enable a data-centric device to acquire aspects of an MVPD navigation device.

areas of the rural communities they serve.¹⁵ Obviously, these multiple platforms will generate divergent compliance challenges for providers that already face higher costs.

In addition, as the Commission is already well aware from other contexts where technology solutions are deployed, ACA points out that solutions are usually first available to larger providers, whose scale and scope drive the navigation device marketplace, in stark contrast to small MVPDs.¹⁶ National Cable concurs, stating that the Commission has previously recognized that “[l]arge cable operators generally dictate equipment features to manufacturers and commonly get priority in delivery of that equipment.”¹⁷ Indeed, RLECs and their affiliates have experienced a similar situation in the past, most notably in the mobile wireless sector. Small commercial mobile radio service (“CMRS”) providers have long documented the challenges associated with gaining timely access to consumer handsets.¹⁸ Depending on the type of solutions that are deployed, the prospect of a similar lack of timely availability for customers of small MVPDs would be an unsurprising outcome.

Even without the explicit provision allowing an exemption for MVPDs with 20,000 or fewer subscribers, the NPRM also recognizes that the Commission has additional authority under the Regulatory Flexibility Act to exempt small MVPDs.¹⁹ As the IRFA notes, even small MVPDs that serve more than 20,000 subscribers could be exempted, as the Commission’s rules consider a “small cable company” to be one that serves 400,000 or fewer subscribers

¹⁵ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 (released July 22, 2013), ¶322.

¹⁶ ACA p. 8, pp. 10-11; 12-13.

¹⁷ National Cable, p. 19, citing *Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report & Order, 27 FCC Rcd 12786 ¶21 (2012) (“BST Encryption Order”).

¹⁸ See, e.g., NTCA reply comments, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 13-135 (filed July 1, 2013), pp. 3-4.

¹⁹ NPRM Initial Regulatory Flexibility Analysis (“IRFA”), ¶31, citing 5 U.S.C. § 603(c).

nationwide.²⁰ Given that the vast array of technologies used by various small MVPDs will likely exacerbate their higher costs, in addition to the fact that their lack of scale and scope result in an inability to drive the marketplace and potentially deny timely access to devices for consumers, an exception for all small MVPDs is warranted.²¹

III. AMONG MVPDS THAT DO NOT RECEIVE AN EXEMPTION, DEFERRED COMPLIANCE IS WARRANTED FOR ALL BUT THE LARGEST PROVIDERS

The NPRM asks when parties will need to begin placing devices in service that comply with the proposed rules, noting that with respect to the navigation device rules “that require a mechanism comparable to a button, key, or icon,” the CVAA provides for a period of “not less than 2 years after the adoption of such regulations to begin placing in service devices that comply with the requirements.”²² The NPRM also states that with respect to navigation device accessibility rules, the CVAA calls for a period of “not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements.”²³

National Cable points out that proposed rules may have greater impacts on smaller companies than larger ones,²⁴ and that “[s]maller cable operators do not have the financial wherewithal to develop these solutions on their own and typically rely on the research and development efforts of the larger operators prior to deploying new equipment and services to

²⁰ *Id.*, ¶8. In fact, the number could be as high as 677,000, depending on the categorization of the provider. *See also Id.*, ¶¶6, 8, 23-25.

²¹ An exemption would not necessarily preclude visually impaired individuals from gaining access to program guides and menus. Third party solutions, retail devices (potentially including some of those referenced in note 14, above), and new equipment provided during normal replacement cycles will likely become available over time that will meet the goals of the NPRM.

²² NPRM ¶57, citing Pub. L. No. 111-260, § 205(b)(6), 124 Stat. 2751, 2775 (2010).

²³ *Id.*

²⁴ National Cable, p. 18, citing *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, Report & Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 ¶133 (2011).

their customers.”²⁵ NTCA concurs with National Cable’s further assertion that “[g]iven this uncertainty about the best approach, and the level of training and set-up that will be required, additional time should be provided to smaller operators.”²⁶

National Cable reasonably recommends that the Commission consider implementing the accessibility rules for the six largest cable operators three years after adoption, at which time it should examine whether audible accessibility is “achievable”²⁷ for smaller operators.²⁸ National Cable observes that there is Commission precedent to this approach.²⁹ NTCA agrees, as having the largest MVPDs – who have the greatest capability to drive the market – implement these requirements first, subsequent costs will be more affordable for smaller providers, should the Commission find it appropriate to apply the rules more broadly after further examination.

IV. CONCLUSION

Small, RLEC-affiliated MVPDs use a myriad of different technologies to provide video in high-cost rural markets. Due to technical complications, as well as small MVPDs’ lack of scale which leads to higher costs and results in their inability to drive the device market, small MVPDs should be exempted from proposed accessibility rules. Moreover, even those MVPDs that do not receive an exemption, and are not among the largest providers in the nation, should not be subject to the proposed rules until large MVPDs have implemented them, and the Commission has the ability to examine whether compliance is achievable for smaller providers.

²⁵ *Id.*, pp. 18-19, citing, e.g., *Amendment of Part 73, Subpart G, and the Commission’s Rules Regarding the Emergency Broadcast System*, Second Report & Order, 12 FCC Rcd 15503, 15517 (1997) (“recognizing that a delay in implementation for smaller companies would lead to a reduction in the price of equipment and would allow smaller operators to benefit in equipment cost reductions resulting from the efforts of larger operators”).

²⁶ *Id.*, p. 19.

²⁷ The NPRM recognizes that the CVAA directs the Commission to impose requirements on MVPDs only to the extent they are “achievable” as defined by statute. NPRM, ¶¶2-3, 39.

²⁸ National Cable, p. 19, n. 65. *See also*, ACA, p. 12.

²⁹ *Id.*, citing *BST Encryption Order* ¶21 (“determining not to extend additional equipment requirement to the incumbent cable operators smaller than the top six”).

Respectfully submitted,



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