

**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 THE ALLIANCE  
FOR COMMUNICATIONS DEMOCRACY**

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The Alliance for Communications Democracy (“ACD”) hereby files its reply comments in response to the opening comments filed in this proceeding.

## **I. INTRODUCTION**

In our initial comments ACD stated support for the NPRM’s goal of implementing the requirements of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act to ensure 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.”

ACD stressed the importance of public educational and governmental (“PEG”) access channel programming to the visually impaired, and urged the FCC to take steps to ensure the visually impaired’s access to PEG programming. In particular, we noted the unique barriers to the visually-impaired’s access to PEG programming that afflict AT&T’s U-verse video service, and the need to require all cable operators to provide individual program description information in electronic program guides (“EPGs”) for PEG programming.

ACD’s position was supported by numerous commenters, including the Alliance for Community Media, Montgomery County, Maryland, the National Association of Counties, the National Association of Telecommunications Officers and Advisors & U.S. Conference of Mayors, Chicago Access Corporation (“CAN TV”), and Lowell Telecommunications Corporation in Lowell, Massachusetts. Subsequently, dozens of reply comments in support of ACD’s position have been filed, and are continuing to be filed, by organizations that provide PEG access channels on cable systems throughout the country.

A theme running throughout these comments is that cable operators are not carrying adequate information about programming on PEG channels on their EPG navigation devices to adequately inform consumers with disabilities about programming on PEG channels. The cable

operators not providing such information, and which have resisted requests to carry listings, include AT&T, Charter, Comcast, Frontier, Metrocast, Midcontinent Communications, Time Warner, and Verizon.

Other commenters which support the accessibility of program information to persons with disabilities are the American Council of the Blind, Consumer Groups and Telecom-RERC, and scores of individuals with disabilities who eloquently describe the importance and need for such information.

On the other side of the NPRM are cable and other MVPD providers - - the National Cable & Telecommunications Association (“NCTA”), AT&T, Comcast, DIRECTV, Dish Network and Echostar Technologies, and Verizon. Also opposing the proposals in the NPRM are the Consumer Electronic Association, Entertainment Software Association, Information, Technology Industry Council, Panasonic Corporation of North America, Rovi Corporation, and the Telecommunications Industry Association.

## **II. REPLY TO NCTA**

Of these industry commenters, however, the only one that addresses PEG-related issues raised by the ACD and others filing in support of PEG access channels, and which the Commission specifically identified in paragraph 36 of the NPRM, is NCTA. Paragraph 36 of the NPRM asks whether “Section 205 provide[s] us authority to require that MVPDs provide programming description information in programming guides for local programs and channels for the purpose of promoting accessibility?”

NCTA’s comments answer “no” and take an overly restrictive and limited view of the Commission’s authority to require MVPD’s to make channel and program information available to third-party applications such as PEG programming. NCTA attempts to narrow the applicability of Section 205 of the CVAA by reading it as limited to situations when a device

covered within that section already contains program guide data, and distinguishes Section 204 from Section 205, “which addresses on-line screen text menus and guides provided by navigation devices . . . *for the display or selection of multichannel video programming.*” (NCTA comments at 11, emphasis in original). NCTA then goes on to argue that “Section 205 thus has a specific and narrow purpose with respect to the accessibility in real-time of on-screen text menus and guides” and that “[n]either the CVAA nor any other provision of the Communications Act confers authority on the Commission to force cable operators or programmers to provide channel and program information for their own use.” *Id.* NCTA adds:

Likewise, Section 205 is focused on making information accessible that *already* is provided in on-screen text menus and guides. If that information is not present, by definition there is no obligation to make it accessible to blind or visually impaired customers. Thus, contrary to the urgings of certain local governments, the Commission cannot use Section 205 or any other provision to require a cable operator to add information to its on-screen text menu and guide that is not already there. The Commission has no authority, under Section 205 of the CVAA or elsewhere, to dictate what content cable operators must include in those on-screen text menus and guides, for any cable customer.

*Id.* at 15-16 (footnotes omitted).

If NCTA’s position were correct, then the premise of the CVAA would be largely eviscerated. But the Commission need not, and should not, accept NCTA’s overly restricted interpretation of Section 205.

In ACD’s initial comments (at 3) we pointed out that the requirements of Section 205 do not distinguish among kinds or classes of programming and, therefore, PEG programming is not exempt from the obligations imposed on cable operators and other MVPDs by Section 205. Because Section 205(a) requires “real-time” accessibility for the visually impaired to on-screen menus and guides provided by navigation devices, failure to provide such accessibility for PEG channels is contrary to Section 205. NCTA is simply wrong to claim otherwise. As we noted in

our opening comments, individual program description information is uniquely important to the visually and hearing impaired, and permitting cable operators to single out PEG channels, and thus impaired subscribers, for exclusion from that capability with respect to PEG programming is flatly inconsistent with Section 205's mandate.

ACD refers the Commission to the opening comments of Montgomery County, Maryland, which provide an excellent discussion of the Commission's authority in this regard and which rebut NCTA's reading of Sections 204 and 205. Montgomery County expresses the view, with which we agree, that a requirement that MVPDs "be required to provide a baseline minimum level of channel, program and accessibility information on program guides and menus fits squarely within the Commission's authority." Montgomery County comments at 14.

The Montgomery County comments point out that the Commission's Video Programming Accessibility Advisory Committee ("VPAAC") recommended a set of functions "considered essential to its video consumption experience" and these included both "Channel/Program Selection" and "Display Channel/Program Information." The VPAAC noted that "on-screen guides and menus to browse available A/V content can take many different forms" and that the amount of program information can vary widely in level of detail. Montgomery County discusses why it is within the Commission's authority to address ambiguities in the terms in the statute by defining what these terms mean and concluded that "a baseline minimum level of channel, program and accessibility information *is necessary* for users with disabilities to operate and use the programming guides and menus." Montgomery County Comments at 15, emphasis in original.

The Montgomery County comments add (at pp. 16-18) a discussion of why the Commission would be justified to exercise its ancillary jurisdiction to achieve the accessibility objectives of the CVAA if necessary to bridge or fill any gaps.

### **III. AT&T'S COMMENTS DO NOT ADDRESS THE PARTICULAR PROBLEMS WITH ITS U-VERSE OFFERING**

Our initial comments described how AT&T's "PEG product" on its U-verse video service offering creates unique and insuperable barriers to the ability of visually-impaired subscribers to access PEG programming. Comments at 6-9. We described the need for a subscriber to navigate multiple submenus and take several steps just to reach and activate a PEG channel and noted that these obstacles are virtually insurmountable for the blind. *Id.* at 7. And, even if the visually-impaired subscriber can surmount all of these obstacles to arrive at a desired PEG channel, the subscriber will then face similar obstacles all over again if she hopes to surf between that PEG channel and non-PEG channels, or between and among other PEG channels and non-PEG channels. *Id.* These particular problems are also described in the comments filed by CAN-TV, which provides a link to a real-time video demo at [www.keepusconnected.org](http://www.keepusconnected.org).

Our initial comments also point out that AT&T's PEG product runs afoul of CVAA Section 205's mandate of real-time access to on-line screen test menus and guides because of the number of steps required to start a guide and find and define the desired channel and program. *Id.* at 8.

AT&T's comments begin by stating that AT&T supports the Commission's efforts to develop regulations to implement the CVAA requirements and that it "is pleased to participate in this most recent CVAA rulemaking proceeding to bring life to Sections 204 and 205." It adds (at 1-2): "Making digital apparatus and navigation devices more usable for persons with vision loss and/or hearing loss will help those persons more fully utilize communications services and

equipment and better access video programming.” Although discussing concerns AT&T has with particular suggestions and proposals in the NPRM, including timing of their implementation, AT&T does not discuss or otherwise acknowledge the many unique problems that its PEG product and U-verse pose for the visually and hearing impaired. Those problems will remain unaddressed unless the Commission takes prompt action, either here or in Docket 09-13, to require AT&T to cease its discriminatory treatment of PEG channels.

#### **IV. CONCLUSION**

The Commission should grant the relief requested in ACD’s initial comments for the reasons set forth in those comments and in the comments of the Alliance for Community Media, Montgomery County, Maryland, the National Association of Counties, the National Association of Telecommunications Officers and Advisors & U.S. Conference of Mayors, Chicago Access Corporation (“CAN TV”), and Lowell Telecommunications Corporation in Lowell.

Respectfully submitted,

*/s/ James N. Horwood*

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