

**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 OF AT&T

AT&T Services, Inc., on behalf of its affiliated companies, (collectively “AT&T”) files this Reply to comments on the Notice of Proposed Rulemaking (“*Notice*”) on implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “CVAA”).¹

I. INTRODUCTION AND SUMMARY

In its initial comments, AT&T emphasized that Sections 204 and 205 of the CVAA are carefully crafted, with specificity, and that the Commission may not add requirements that are outside the bounds of the statute. AT&T also stressed that Congress granted entities covered by Sections 204 and 205 maximum flexibility to determine how they will comply. AT&T reiterates those positions in this reply with respect to the application of Sections 204 and 205 to stand-alone software, to all navigation devices, to potential performance objectives, and to public, educational, and governmental (“PEG”) programming.

Sections 204 and 205 cover hardware, namely “digital apparatus” and “navigation devices.” They do not cover stand-alone software. Instead, Sections 204 and 205 apply only to software that is integrated in the apparatus or device, i.e. software that is pre-installed in the apparatus or device, provided by the covered entity providing the device, or required to be

¹ Twenty-First Century Communications and Video Accessibility Act, S.3304 (P.L. 111-260) (2010), as amended by S. 3828 (P.L 111-265) (2010) (“CVAA”).

installed by the covered entity providing the device. This result follows prior Commission interpretations of the terms “apparatus” and “equipment” in Sections 303 and 716 of the Communications Act, respectively, as modified by the CVAA.²

It is also premature for the Commission to adopt performance objectives for Sections 204 and 205. These Sections of the CVAA are self-implementing and thus, performance objectives are unnecessary, as they would benefit neither covered entities nor persons with disabilities. Moreover, performance objectives would in substance and spirit deviate from the Congressional directive that the Commission not subject covered entities to any technical standards, protocols, procedures or other technical requirements.³ Instead, the Commission must grant covered entities maximum flexibility to determine how to comply with Sections 204 and 205. This principle of flexibility extends to a covered entity’s decision as to how best to make on-screen text menus and guides audibly accessible. Covered entities may conclude that text menus and guides can be made audibly accessible to the visually impaired through more effective means than a word for word recitation. Thus, the Commission should not impose such a requirement.

A few commenters urge the Commission to extend Sections 204 and 205 over the manner in which AT&T U-Verse displays PEG channels and the manner in which MVPDs describe PEG channels and PEG programming in on-screen programming guides. Contrary to those pleas, the Commission is not authorized to regulate the substance of on-screen text menus and guides. Sections 204 and 205 require *existing* on-screen text menus and guides to be audibly accessible. They do not regulate the content of text menus and guides. Moreover, the issues pertaining to PEG programming are already under consideration in another docket.

² 47 U.S.C. §§303(u), (z); 716 (2011).

³ 47 U.S.C. §§303(aa)(1), (bb)(1)(2011).

II. DISCUSSION

A. SECTIONS 204 AND 205 OF THE CVAA APPLY TO SOFTWARE THAT COVERED ENTITIES INCLUDE WITH DIGITAL APPARATUS AND NAVIGATION DEVICES, PROVIDE TO USERS FOR DOWNLOAD, OR REQUIRE USERS TO DOWNLOAD.

AT&T agrees with industry commenters that stand-alone software applications are not covered by Sections 204 and 205.⁴ If Congress had intended to apply Sections 204 and 205 to stand-alone software, it would have explicitly done so. Instead, Congress applied Section 204 to “digital apparatus” and Section 205 to “navigation devices.” Stand-alone software applications are neither an “apparatus” nor a “device.” Therefore, the Commission should interpret “digital apparatus” and “navigation devices” to include only those software applications that are integrated into the apparatus or device, i.e., those software applications installed in an apparatus or device, provided to users, or that users are required to install to view video programming. This interpretation recognizes the reality that covered entities influence accessibility only for those software applications that they control.

Applying Sections 204 and 205 to only those software applications that covered entities control would also be consistent with the Commission’s findings in the Advanced Communications Services (“ACS”) Order⁵ and the IP Closed Captioning Order.⁶ In the ACS

⁴ See, e.g., Comments of The Consumer Electronics Association, MB Docket No. 12-108, at 11-12 (filed July 15, 2013); Comments of DISH Network L.L.C. and EchoStar Technologies L.L.C., MB Docket No. 12-108, at 5 (filed July 15, 2013); Comments of Telecommunications Industry Association, MB Docket No. 12-108, at 9 (filed July 15, 2013); Comments of Verizon and Verizon Wireless, MB Docket No. 12-108, at 8 (filed July 15, 2013).

⁵ Report and Order, *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*, 26 FCC Rcd 14557 (2011)(“ACS Order”).

Order, the Commission concluded that the term “equipment” in Section 716(a)(1) of the Communications Act applies only to software that the manufacturer pre-installs on hardware, provides to the consumer, or requires the consumer to download⁷ and not to software acquired by a user separately from a machine or device.⁸ The Commission further opined that the “[t]he word “device” refers to a physical object and cannot reasonably be construed to also refer to separately-acquired software.”⁹

Likewise, in the IP Closed Captioning Order, the Commission concluded that the term “apparatus” includes integrated software, i.e., software installed in the device by the manufacturer before sale or that the manufacturer requires the consumer to install after sale.¹⁰ Consistent with these decisions, the Commission should conclude that the term “digital apparatus,” as referenced in Section 204, and the term “navigation devices,” as referenced in Section 205, do not include software applications downloaded or otherwise added independently by the consumer after sale or that is not provided or required by the covered entity to enable the apparatus or device to play video programming.

⁶ Report and Order, *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 (2012)(“*IP Closed Captioning Order*”).

⁷ *ACS Order*, 26 FCC Rcd at 14582, ¶ 69, fn 150.

⁸ *Id.* at 14582, ¶63.

⁹ *Id.* at 14582, ¶62.

¹⁰ See *IP Closed Captioning Order*, 27 FCC Rcd at 840, ¶ 93. The inclusion of the word “digital” in Section 204 has no bearing on the application of Section 204 to software. It simply narrows the type of apparatus to which section 204 applies.

B. THE COMMISSION SHOULD ALLOW COVERED ENTITIES THE FLEXIBILITY THAT CONGRESS INTENDED TO COMPLY WITH SECTIONS 204 AND 205.

Congress granted covered entities maximum flexibility to determine the manner in which to comply with Sections 204 and 205. To reinforce that framework, Congress also prohibited the Commission from adopting any technical standards, protocols, procedures or requirements that would limit this flexibility.¹¹ Consequently, the Commission may not require all navigation devices to be audibly accessible, adopt performance objectives, or require word for word restatements of text menus and guides, as some have advocated.

1. Covered Entities May Comply With Section 205 By Providing Select Navigation Devices With Audible Text Menus And Guides.

Section 205 does not require that all navigation devices made available to consumers offer audible on-screen text menus and guides. Instead, Section 205 requires that, if achievable, on-screen text menus and guides provided by navigation devices be audibly accessible “*upon request*” by individuals who are blind or visually impaired.¹² Hence, a covered entity may provide a consumer with a navigation device without audible text menus and guides if the consumer does not request those features. Covered entities may very well decide to include the capability of providing audible text guides and menus in all their navigation devices. But Congress made clear that they may not be required to bear the costs of providing devices with audibly accessible menus and guides to consumers that neither request nor need them. Congress also mandated that the Commission provide covered entities with “maximum flexibility to select

¹¹ 47 U.S.C. §§303(aa)(1), (bb)(1)(2011).

¹² 47 U.S.C. §303(bb)(1)(2011); CVAA § 205(b)(3), 124 Stat. 2751, 2775 (2010).

the manner of compliance.”¹³ A requirement that this capability be included in all devices would violate that mandate.

In short, AT&T agrees with DirectTV that “[t]he better approach would be to allow each MVPD the flexibility to determine which navigation device(s) it will offer with the accessibility features required under Section 205. Depending upon the cost and complexity of implementation, some may incorporate such features into every model of navigation device. Others may choose to make available devices at various price points or with various major feature groups. In any case, MVPDs must be given the flexibility to determine how best to make their services available to visually impaired consumers.”¹⁴

2. It Is Premature To Adopt Performance Objectives.

AT&T also agrees with Verizon and The Consumer Electronics Association that performance objectives for making digital apparatus and navigation devices accessible under Sections 204 and 205 are not justified.¹⁵ The accessibility requirement in Sections 204 and 205 are self-implementing. More detailed requirements are unwarranted at this time. Further, Congress expressly prohibits the Commission from specifying technical standards, protocols, procedures, and other technical requirements to meet the accessibility mandates of Sections 204 and 205.¹⁶ Performance objectives would at a minimum deviate from the spirit of, and at worse contravene, this prohibition.

¹³ CVAA § 205(b)(4)(A), 124 Stat. 2751, 2775 (2010).

¹⁴ Comments of Direct TV, LLC, MB Docket No. 12-108, at 6 (filed July 15, 2013).

¹⁵ Comments of Verizon and Verizon Wireless at 9; Comments of The Consumer Electronics Association at 26.

¹⁶ 47 U.S.C. §§303(aa)(1), (bb)(1)(2011).

3. On-Screen Text Menus, Guides, and Visual Indicators Need Not be Word for Word Restatements.

AT&T agrees with DirectTV that audibly accessible menus and guides need not consist of a word for word replication of the full on-screen text.¹⁷ A read-out of the full menu or guide may be too voluminous and detailed to be helpful for the visually impaired. Consequently, a covered entity may seek to offer a streamlined audible version of a lengthy channel guide or an audible menu or guide that is organized differently than the on-screen text menu or guide. Commission regulations must allow covered entities this flexibility so that they can focus on providing audibly accessible menus and guides to maximize the consumption experience of the visually impaired.¹⁸

C. SECTIONS 204 AND 205 IMPOSE NO OBLIGATIONS ON MVPDS RELATING TO THE MANNER IN WHICH PEG ACCESS PROGRAMMING IS DESCRIBED OR MADE AVAILABLE.

A few commenters use this proceeding to renew their complaints about the manner in which PEG channels are presented on AT&T's U-Verse system.¹⁹ The Commission is already considering these issues in MB Docket 09-13, and each of these commenters has participated in that docket. In fact, the PEG issues raised by these commenters are the primary focus of MB Docket 09-13. In filings and *ex parte* presentations in that docket, AT&T has demonstrated how PEG channels are displayed on U-Verse, explained the advantages of displaying PEG channels

¹⁷ See Comments of DirecTV, LLC, MB Docket No. 12-108 at 4-5 (filed July 15, 2013).

¹⁸ The Commission has previously recognized that a verbatim recitation of words may be a barrier to effective relay service for persons with certain disabilities. Report and Order, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, 15 FCC Rcd 5140, 5164-65 (2000).

¹⁹ Comments of Alliance for Communications Democracy, MB Docket No. 12-108 (filed July 15, 2013); Comments of Alliance for Community Media, MB Docket No. 12-108 (filed July 15, 2013); Chicago Access Corp., MB Docket No. 12-108 (filed July 15, 2013).

in that manner, refuted claims that U-Verse discriminates against person with disabilities, demonstrated the absence of Commission authority to regulate the display of PEG channels, and presented a compelling basis for the Commission to reject calls to regulate how PEG channels are provided on U-Verse even if the Commission had the required authority. AT&T refers the Commission to those filings and incorporates those arguments by reference in this proceeding.²⁰

The Alliance for Communications Democracy (“ACD”) claims that the manner in which PEG programming appears on the AT&T U-Verse channel guide violates the CVAA requirement of “‘real-time’ access to on-screen text menus and guides.”²¹ ACD misreads Section 205. The CVAA does not require that onscreen text menus and guides be provided in real-time. It requires, in certain circumstances, that on-screen text menus and guides *are audibly accessible* in real-time.²² Stated differently, the statute requires that the audible interpretation of on-screen text menus and guides occurs in real-time with the on-screen text display of those menus and guides. And, in all events, it provides no basis for concluding that AT&T does not provide real-time access to on-screen text menus and guides for PEG programming.

In a further attempt to shoehorn the PEG programming access issues into this proceeding, a few commenters also argue that Sections 204 and 205 require all MVPDs to more fully

²⁰ See, e.g., Comments of AT&T Opposing Petitions For Declaratory Ruling, *Petition for Declaratory Ruling of the City of Lansing, Michigan, on Requirements for a Basic Service Tier and for PEG Channel Capacity Under Sections 543(b)(7), 531(a), et al., Petition for Declaratory Ruling of Alliance for Community Media, et al., that AT&T’s Method of Delivering Public, Educational, and Government Access Channels Over Its U-verse System Is Contrary to the Communications Act of 1934, et al.*, MB Docket No. 09-13 (filed March 9, 2009).

²¹ Comments of Alliance for Communications Democracy at 8.

²² 47 U.S.C. §303(bb)(1)(2011).

describe PEG programming in their text channel guides.²³ Such requests stray far afield from the language of Sections 204 and 205. Those Sections of the CVAA focus on making *existing* on-screen text menus, guides, and other visual indicators accessible, not on the content of or how information should appear in on-screen text menus, guides, and other visual indicators. Moreover, there is no language in the CVAA to suggest that Congress intended to extend the accessibility requirements in Sections 204 or 205 to the substance of text guides and menus. Contrary to the urgings of some commenters, the Commission cannot use Sections 204 and 205 as a pretext to regulate the content of MVPD's on-screen text channel guides.²⁴ For these reasons, the Commission should reject attempts to drag PEG programming issues into this docket.

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Respectfully submitted,



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²³ Comments of Alliance for Communications Democracy at 9-10; Comments of Alliance for Community Media at 3-4; Comments of Montgomery County, Maryland, MB Docket No. 12-108 at 11-13 (filed July 15, 2013); National Association of Counties, National Association of Telecommunications Officers and Advisors and the U.S. Conference of Mayors, MB Docket No. 12-108 at 1-2 (filed July 15, 2013).

²⁴ Even if the Commission had the authority to regulate the content of channel guides, MVPDs could not typically provide the detailed programming descriptions that commenters seek, as PEG programmers and networks almost uniformly do not provide this type of information.