

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Accessibility of User Interfaces, and Video  
Programming Guides and Menus

MB Docket No. 12-108

**REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND**

Harash (Sonny) Segal,  
Chief Information Officer & Director  
Dieter Klinger, Chief Operating Officer  
Mitsuko R. Herrera, Policy Advisor  
Department of Technology Services  
Montgomery County, Maryland  
101 Monroe Street, 13th Floor  
Rockville, MD 20850

Marjorie Williams, Franchise Manager  
Office of Cable and Broadband Services  
Montgomery County  
100 Maryland Avenue, Suite 250  
Rockville, MD 20850

Gail A. Karish  
BEST BEST & KRIEGER LLP  
2855 East Guasti Road, Suite 400  
Ontario, CA 91761  
Telephone: (909) 989-8584  
Fax: (909) 944-1441

*Counsel for Montgomery County*

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## SUMMARY

In the opening round of this proceeding, the County submitted that the Commission has both a duty and ample authority to implement the requirement in the *Twenty-First Century Communications and Video Accessibility Act of 2010* (“CVAA”) that menus and guides be accessible to persons with disabilities in a manner that ensures that the guides are *meaningfully accessible*. To achieve this, the County urged the Commission to adopt rules requiring these guides to include *for all channels*, the channel name, program title, program description and accessibility options (*i.e.*, closed captioning and video description). Numerous public access, educational and governmental (“PEG”) channel operators have filed in this proceeding raising concerns similar to the County’s about the accessibility of multichannel video programming distributors’ on-screen programming guides. These PEG channel operators are located in communities large and small, across the country including in the states of California, Colorado, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, North Dakota, Ohio, Oregon, Tennessee, Texas, Vermont, Virginia, and Washington. These commenters report that top 25 MVPDs including AT&T, Charter, Comcast, Cox Communications, Frontier, MetroCast, Midcontinent Communications, RCN, Suddenlink, Time Warner Cable, Verizon and WideOpenWest Networks, are including generic labels in their programming guides rather than detailed program information and accessibility option information clearly necessary for programming guides to be meaningfully accessible as envisioned by the CVAA.

The Commission cannot, and need not, let this situation stand. Implementing the programming guide accessibility requirements of the CVAA without ensuring that the on-screen guides themselves convey the basic information needed for users with visual or auditory

disabilities to make meaningful video choices will not fulfill the requirements of Sections 204 and 205 of the CVAA; to the contrary it would undermine the purpose of this rulemaking. Similarly, while the County supports the Commission’s proposal to adopt a “one step” approach to activate accessibility features, the County urges the Commission to clarify in its final rules from where the single step activation must take place. The County also asks that the Commission consider rules to enable video device users to be able to adjust the font size, font color and background contrast of closed captioning text.

The County respectfully requests that the Commission adopt rules that address these concerns and meaningfully implement the accessibility requirements of the CVAA.

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**REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND**

Montgomery County, Maryland (the “County”) submits these reply comments in the above captioned rulemaking proceeding (“NPRM”).

**I. THE COMMISSION HAS A DUTY TO IMPLEMENT THE ON-SCREEN PROGRAMMING GUIDE PROVISIONS OF THE CVAA IN A MANNER THAT IS MEANINGFUL BY ESTABLISHING MINIMUM REQUIREMENTS**

In the opening round of this proceeding, the County submitted that the Commission has both a duty and ample authority to implement the requirement in the *Twenty-First Century Communications and Video Accessibility Act of 2010* (“CVAA”) that menus and guides be accessible to persons with disabilities in a manner that ensures that the guides are *meaningfully accessible*. To achieve this, the County urged the Commission to adopt rules requiring these guides to include *for all channels*, the channel name, program title, program description and accessibility options (*i.e.*, closed captioning and video description). The National Association of Counties (“NACO”), the National Association of Telecommunications Officers and Advisors (“NATOA”), and the U.S. Conference of Mayors (“USCM”) also submitted comments stating that the CVAA “provides the FCC with the legal authority to require cable distributors to carry program description information in programming guides for local public, education and

government (PEG) channels.”<sup>1</sup> NACO, NATOA and USCM further state that “in order for audible on-screen menus to have functional utility to the visually impaired, the on-screen menu itself should be populated with information that is meaningful and helpful in program selection.”<sup>2</sup> Requiring this level of information on the guide is consistent with the Video Programming Accessibility Advisory Committee (“VPAAC”) Report proposal that sufficient information be carried on the guides to ensure that accessibility options are known to users prior to selecting and viewing a program.<sup>3</sup> The County indicated that two of the three wireline multichannel video programming distributors (“MVPDs”) operating in the County already carry on their on-screen programming guides all this information (but not, however, information on the accessibility options) for programs on the County’s PEG channels, as well as for other commercial and non-commercial channels, but that Verizon had refused to voluntarily implement technological changes necessary to display similar program information on its on-screen guide for the County’s PEG channels.<sup>4</sup>

As of the time of this reply filing, dozens of other PEG channel operators have filed in this proceeding raising similar concerns to the County’s. These PEG channel operators are located in communities large and small, across the country including in the states of California, Colorado, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New

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<sup>1</sup> Comments of National Association of Counties (“NACO”), the National Association of Telecommunications Officers and Advisors (“NATOA”), and the U.S. Conference of Mayors (“USCM”) (filed July 12, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> See, *In the Matter of Accessibility of User Interfaces and Video Programming Guides and Menus*, MB Docket No. 12-108, Comments of Montgomery County, Maryland (filed July 15, 2013) at 9-13, for discussion of the VPAAC Report proposal.

<sup>4</sup> The County notes here that if Verizon made these technical changes to enable display of program information within Montgomery County, Verizon could provide program information for all PEG channels in all the Washington Dc-metro area communities served by the same Verizon headend equipment.

Jersey, North Dakota, Ohio, Oregon, Tennessee, Texas, Vermont, Virginia, and Washington. Like the County, these PEG channel operators provide local programming vital to their communities. Like the County, these PEG channel operators carry close captioned programming even though some may be excused from doing so under the Commission's hardship rules.

For example, Capital Community Television (CCTV) in Salem, Oregon reports that the city is the largest state capital in the country with no local broadcast TV affiliate, and CCTV was founded 24 years ago to provide local television coverage.<sup>5</sup> Chicago Access Corporation (CAN-TV) reports that for the past 14 years it has carried a locally produced and closed captioned disability rights program called "ADAPT." This local, original television program was created by a group of Chicago residents who are themselves disabled.<sup>6</sup> Indeed, the ADAPT program "technical director is legally blind."<sup>7</sup> CAN-TV also carries Chicagoland Radio Information Service (CRIS Radio) in which volunteers read from local news sources to provide information for the visually impaired. Pittsfield Community Television in western Massachusetts produces a program called "AD-Lib" that promotes independent living with disabilities and also simulcasts programming with the Radio for the Blind local broadcast station.<sup>8</sup>

Yet every single one of these local programmers reports that neither a notation that a program is closed captioned, nor little or none of their other programming information, is being disclosed on their MVPDs' on-screen programming guides. Instead, these local channels are being generically labeled on the programming guides of MVPDs with names like:

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<sup>5</sup> See Letter from Alan Bushong, CCTV Executive Director to the Commissioners, dated July 25, 2013.

<sup>6</sup> See Letter from Barbara Popovic, Executive Director, Chicago Access Network Television to the Commissioners, dated July 10, 2013.

<sup>7</sup> *Id.*

<sup>8</sup> See Letter from Bernard J. Avalle, Executive Director, Pittsfield Community Television to the Commissioners, dated August 6, 2013.

- “public access programming”
- “government access”
- “no programming details”
- “customer information”
- “local programming”
- “LOCL”
- “EDUC”
- “GOVT”
- “government meeting”
- “educational programming”
- “municipal access”

According to these filings, many top 25 MVPDs including AT&T,<sup>9</sup> Charter, Comcast, Cox Communications, Frontier, MetroCast, Midcontinent Communications, RCN, Suddenlink Communications, Time Warner Cable, Verizon and WideOpenWest Networks, are including generic labels in their programming guides for this local programming rather than detailed program information typically included for commercial channels. The channel name, program title, description and accessibility features are clearly necessary for programming guides to be meaningfully accessible as envisioned by the CVAA.

The Commission cannot, and need not, let this situation stand. Implementing the programming guide accessibility requirements without ensuring that the on-screen guides themselves convey the basic information needed for users with visual or auditory disabilities to make meaningful video choices will not fulfill the requirements of the CVAA; to the contrary it would undermine the fundamental purpose of this rulemaking.

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<sup>9</sup> As described more fully in the Comments of Alliance for Communications Democracy (filed July 15, 2013) at 6-9, AT&T not only uses a generic label of “Local Government Education and Public Access” for its “Channel 99” application, but imposes additional hurdles by requiring viewers to launch an application then find individual PEG stations among a DMA-wide listing.

## II. THE COMMISSION MUST REJECT NCTA'S SUGGESTION THAT IT LACKS AUTHORITY TO MEANINGFULLY IMPLEMENT THE ON-SCREEN GUIDE ACCESSIBILITY REQUIREMENTS OF THE CVAA

The objection to the County's proposal raised by the National Cable & Telecommunications Association ("NCTA") based on 47 USC § 544(f)(1) should be rejected. It both ignores the Commission's specific mandate to implement the CVAA and misconstrues the limited nature of the request that the County and others are making to ensure that the Commission fulfill its mandate under the CVAA by enacting meaningful regulations.

NCTA argues that the Commission has no authority "to dictate what content cable operators must include in ... on-screen text menus and guides, for any cable customer[,]” and that Section 205 of the CVAA only permits the Commission to make rules to make information accessible “that *already* is provided in on-screen text menus and guides.”<sup>10</sup> In support of its position, the NCTA relies on 47 USC § 544(f)(1) which provides: “Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title [47 USC §§ 521 et seq.]”

The provision cited by NCTA was enacted as part of the Cable Communications Policy Act of 1984, at a time when Congress also established rules for public, educational and governmental access channels and for leased access channels, and preserved (through a carve out in 47 USC § 544(f)(2)) must carry requirements and other content related regulations previously adopted by the Commission. In that context, the statute limited (but did not eliminate) the future regulation of the content of cable service by the Commission, states and local franchising authorities.

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<sup>10</sup> *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Comments of the National Cable & Telecommunications Association (filed July 15, 2013) at 11-12 (“NCTA Comments”).

What NCTA's argument ignores is that the Commission is not acting here pursuant to its general authority under the Communications Act. It is acting pursuant to the specific authority under the CVAA. Congress not only enacted the CVAA specifically to address the accessibility of programming guides, but it authorized the Commission to develop the necessary rules. Section 205(b) requires the Commission to prescribe those rules after the submission of an advisory committee report that makes, "[w]ith respect to video programming guides and menus, a recommendation for the standards, protocols, and procedures used to enable video programming information and selection provided by means of a navigation device, guide, or menu to be accessible in real-time by individuals who are blind or visually impaired."<sup>11</sup> Thus, the Commission has a Congressional mandate to implement the CVAA based on the expert advice and recommendations of its advisory committee (the VPAAC) and the community of users that depend on these video accessibility functions. The Commission may exercise its authority as an expert agency to define ambiguous terms in the CVAA.<sup>12</sup> The VPAAC recommended a set of functions "considered essential to the video consumption experience,"<sup>13</sup> and these included both "Channel / Program Selection" and "Display Channel / Program Information." Thus, the Commission has direct authority under Section 205(b) to implement the VPAAC's recommendation that programming guide and channel information be carried and made accessible. Moreover, the Commission may require that program information for all channels, including local community channels, be carried on the on-screen programming guides.

As set out in detail in the County's initial comments, the Commission has ample authority to implement the CVAA fully and meaningfully, including establishing minimum

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<sup>11</sup> CVAA, Section 201.

<sup>12</sup> *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

<sup>13</sup> VPAAC Report at 8.

requirements for programming guides to include channel name, program title, program description and the accessibility options.<sup>14</sup> Having been charged by Congress to ensure that the guides and user menus are accessible and usable by persons with disabilities, the Commission must, as it has in other instances, impose requirements to “carry out meaningfully the accessibility requirements”<sup>15</sup> in order to “fully achieve that objective.”<sup>16</sup>

To be clear, the County is not proposing that the Commission require any MVPD to have a programming guide. The County is simply proposing that any programming guide an MVPD does decide to carry should be required to contain channel names, program titles, program descriptions and accessibility information in order to make the CVAA’s accessibility requirement for guides meaningful. On-screen programming guides are commonplace today because they are an integral part of enjoying cable service which regularly makes hundreds of channels available to subscribers. Before the programming guide requirements the County is proposing would be triggered, the MVPD would have already decided to provide the video programming (*i.e.*, opted voluntarily to carry the channel as part of its cable service) or would have already been required to provide the video programming, (*i.e.*, carry the PEG channel, or must-carry channel as part of its cable service). And the MVPD would have already decided to provide an on-screen programming guide containing video programming information to aid its

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<sup>14</sup> See Comments of Montgomery County, Maryland at 13-18 discussing direct statutory authority and ancillary authority.

<sup>15</sup> *In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities* (WT Docket No. 96-198) Report And Order And Further Notice Of Inquiry, 16 FCC Rcd 6417, 6455 (1999), ¶ 93.

<sup>16</sup> *Id.*

subscribers in perusing their video programming options. Only in that circumstance would the programming guide requirements apply.

Moreover, requiring channel names, program titles, program descriptions and accessibility options to appear on the programming guide not only ensures the accessibility objective of the CVAA is fulfilled, it is, at most, an *incidental and minimal* programming guide requirement.<sup>17</sup> The NCTA readily admits cable operators often purchase “guide data” from third parties.<sup>18</sup> The leading provider of such guide data, Rovi Corporation, has previously told the Commission that guide data is only a small component of video programming service. In comments filed with the Commission in another proceeding three years ago, Rovi stated:

Indeed, the guide data acquired by the operators for use in building their guide service is only a minor portion of the aggregate costs to create the MVPD’s guide service. While supplying this data is an important part of Rovi’s business and essential to the overall guide service, the other components of a guide service are critical....Simply put, while the guide data is a significant component of the guide service, it is just one of several components that contribute to the value of the guide service as a whole, and the guide service is one of several components that contribute to the value of the video programming service as a whole, for which consumers are willing to pay a fee.<sup>19</sup>

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<sup>17</sup> In contrast, *see Motion Picture Ass'n of Am. v. FCC*, 309 F.3d 796, 803 (D.C. Cir. 2002)(“Video description is not a regulation of television transmission that only incidentally and minimally affects program content; it is a direct and significant regulation of program content. The rules require programmers to create a second script.”). In that case, the Commission was found to lack authority under Section 1, 47 USC § 151, to enact video description regulations. Following that ruling, Congress acted to include in the CVAA specific authority to reinstate the video description rules as well as authority to develop other rules necessary to address the accessibility of programming guides.

<sup>18</sup> NCTA Comments at 11.

<sup>19</sup> *In the Matter of Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, Reply Comments of Rovi Corporation (filed Aug. 12, 2010) at 2.

Moreover, the programming information that the County is urging the Commission to require to make programming guides meaningful to persons with disabilities is, by and large, content that the MVPD already carries for most channels and acquires from third parties so it is content over which the MVPD would have little or no editorial control in any event. For example, a cable operator has no editorial control over the content of a PEG channel.<sup>20</sup> The provider has no control over the programming, no control over channel name, program titles, program descriptions or whether any particular program is closed captioned. If this information is made available to an MVPD with a programming guide, the MVPD should be required to carry it on the programming guide so that the guide is truly accessible to disabled users. That is all the County asks for, not just for PEG channels, but for all channels.

In anticipation of the Commission's rules, some MVPDs are actively innovating and developing new interactive voice and accessibility technology. Many are touting their ability to achieve the goals of this section of the CVAA with new technology. Comcast has told the Commission in a recent *ex parte* that it is developing a "'talking guide' prototype [that] will enable a voice feature that, among other things, can inform the user of which menu she is on (e.g., Main Menu, On Demand, Programming Guide, Search, Settings, etc.), ***what channel and program she is currently watching, what programming is on other channels or is coming up in the future***, etc."<sup>21</sup> Hence, Comcast appears to recognize the importance of providing programming information to disabled subscribers with enough detail to allow meaningful choices.

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<sup>20</sup> 47 USC § 531.

<sup>21</sup> Letter from James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 1, 2013, at 1.

Having technology that can communicate programming guide information is absolutely necessary to successfully implement the CVAA, and the County applauds the efforts of Comcast and other MVPDs who are actively working on technical solutions. However, as the Commission and Congress have previously recognized with respect to closed captioning requirements, only mandatory rules can ensure that all Americans will have access.<sup>22</sup> As long as carrying necessary information on the programming guide remains voluntary, doing so will be left to the discretion of each MVPD. Indeed the nation's largest MVPD carries local community programming information on its on-screen guide in some communities and not in others, and numerous other MVPDs in numerous communities have chosen not to carry this information at all for local community programming.<sup>23</sup> For a person without any disability, it may be an inconvenience to not have the channel name, program title, program description and accessibility options on the programming guide for some channels.<sup>24</sup> But for a person with a disability, the lack of detail on the programming guide creates an insurmountable barrier to access. There truly

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<sup>22</sup> *In the Matter of Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility*, 11 FCC Rcd 19214, 19216 (FCC 1996) (“The legislative history of this section states that it is Congress’ goal ‘to ensure that all Americans ultimately have access to video services and programs particularly as video programming becomes an increasingly important part of the home, school and workplace.’ The House Committee recognized that there has been a significant increase in the amount of video programming that includes closed captioning since the passage of the Television Decoder Circuitry Act of 1990 (“TDCA”). Nevertheless, the House Committee expressed a concern that video programming through all delivery systems should be accessible to persons with disabilities.”) (citations omitted)

<sup>23</sup> See discussion *supra* in Part I.

<sup>24</sup> However, as noted in the May 6, 2013 *ex parte* letter filed in this proceeding by NACO, USCM and NATOA, failure to include searchable program information and accessibility options on the programming guide could render some programs incapable of being found. “Finally, as we understand the state of technology, increasingly cable guides, rather than channels will be surfed. We also understand that technology not unlike Siri on an iPhone could be soon employed for channel guides. Absent information included in the channel guide for community programming no results will be displayed for community programming because the cable operator has not include[d] the channel name or program descriptions in its searchable guide.”

is no point in requiring advanced technology to make programming guides accessible if the programming guides do not provide information that actually aids the user with auditory or visual disabilities in making programming choices.

In the CVAA, Congress has already decided that user interfaces and video programming guides and menus are essential to making video services accessible and it has given the Commission direct responsibility to make them accessible. Requiring guides to carry channel names, program titles, program descriptions and accessibility options would simply ensure that this responsibility is performed meaningfully and in a manner that fully achieves Congress' accessibility objective.

**III. THE COMMISSION SHOULD CLARIFY ITS ONE STEP PROPOSAL FOR ACTIVATING ACCESSIBILITY FEATURES AND TAKE OTHER MEASURES TO ENSURE ACCESSIBILITY FEATURES ARE AS USEFUL AS POSSIBLE TO TELEVISION VIEWERS**

In the opening round, the County expressed support for the Commission's one-step proposal. The Commission's proposal is that whatever this mechanism is, it must be able to activate the closed captioning or video description feature immediately in a single step. Having reviewed the comments of the Consumer Groups and Telecom-RERC, and of the Alliance for Communications Democracy, the County continues to support the one-step proposal but sees the need for the Commission to provide additional clarification on what the proposal would mean, and in particular addressing from where the single step activation must take place.<sup>25</sup>

The County also urges the Commission to address the June 21, 2013 comments filed in this proceeding by Dorothy L. Walt. Ms. Walt is a regional representative of the Helen Keller National Center For Deaf-Blind Youth and Adults, as well as a member of the Commission's

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<sup>25</sup> See Comments of Consumer Groups and Telecom-RERC (filed July 15, 2013) and Comments of Alliance for Community Democracy (filed July 15, 2013).

Consumer Advisory Committee. Ms. Walt noted the importance of enabling users to change the font size, color and background contrast of closed captioning text. Similar comments regarding the ability of people with vision impairments to be able to adjust the appearance of closed captioning text were made during the Commission's digital transition proceedings. The County raises these issues because there is a significant number of older adult television viewers within the County who experience both hearing and vision loss as they age. We urge the Commission to enact rules which will make accessibility features as useful as possible to the television audience.

#### IV. CONCLUSION

For all of the above reasons, the County urges the Commission adopt rules implementing Section 204 and 205 of the CVAA consistent with the proposals submitted by the County.

Harash (Sonny) Segal  
Chief Information Officer & Director  
Dieter Klinger, Chief Operating Officer  
Mitsuko R. Herrera, Policy Advisor  
Department of Technology Services  
Montgomery County, Maryland  
101 Monroe Street, 13th Floor  
Rockville, MD 20850

Marjorie L. Williams, Franchise Manager  
Montgomery County, Maryland  
Office of Cable and Broadband Services  
100 Maryland Avenue, Suite 250  
Rockville, MD 20850

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51059.00048\8088115.5

Respectfully submitted,



Gail A. Karish  
Best Best & Krieger LLP  
2855 East Guasti Road, Suite 400  
Ontario, CA 91761

[Gail.Karish@BBKlaw.com](mailto:Gail.Karish@BBKlaw.com)  
Telephone: (909) 989-8584  
Fax: (909) 944-1441

*Counsel for Montgomery County, Maryland*