

August 22, 2013

Notice of Ex Parte

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

RE: Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108

This is to notify you that on August 20, 2013, representatives of the American Foundation for the Blind (AFB) met by telephone with members of the staff of the Commission's Media Bureau (MB), Consumer and Governmental Affairs Bureau (CGB), and Office of General Counsel (OGC) regarding MB Docket No. 12-108. AFB participants included Paul W. Schroeder, Vice President, Programs and Policy, and Mark Richert, Director, Public Policy. Commission staff participants included Michelle Carey, Mary Beth Murphy, Steven Broeckert, Evan Baranoff, Adam Copeland, Maria Mullarkey, and Brendan Murray of MB; Susan Aaron of OGC; and Karen Peltz Strauss, Rosaline Crawford, and Eliot Greenwald of CGB.

Commission staff requested this meeting with AFB to seek AFB's reaction to a previously-unarticulated and novel approach to the application of sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act (CVAA). While nearly all of the particulars about this purported solution to the alleged conundrum posed by sections 204 and 205 were either not shared with AFB or were not yet thought through as of the date of this meeting, the core notion put before AFB was that there is some growing sense among some in the Commission that, with some creative drafting, all of the benefits of section 204 that advocates have consistently understood such section to afford can in essence be written into section 205 through the Commission's eventual Report and Order in this docket. For instance, Commission staff suggested that there might be some way to mitigate the "upon request" framework of section 205 by explicitly either requiring, or at least permitting, fulfillment of the section 205 accessibility obligations through the broad distribution of 205-covered equipment via retail outlets nationwide. Moreover, while section 205 on its face seems to be limited to on-screen text menus and guides, Commission staff seemed to suggest that the comprehensive list of eleven essential functions, which both advocates and industry commenters have understood to most clearly concern section 204-covered equipment, could nevertheless be read into section 205.

AFB took away from this presentation that, while the Commission might believe its hands are tied with respect to scoping section 205 to encompass virtually all TV and TV-like equipment, leaving precious little within the scope of section 204, the Commission may also believe that such scoping is a mere academic and irrelevant matter given that the Commission has the authority to interpret and apply section 205 in a manner that would have, in real world terms, an effect that is nearly indistinguishable from the effect that most parties have understood section 204 to intend. The animating force behind the development of some novel approach to these complex issues seems to be that Commission staff are petrified by the prospect of litigation challenging the entire eventual Report and Order should the Commission either move forward as tentatively concluded in the NPRM or proceed as advocates and industry have even most recently urged the Commission to do.

In reaction to this presentation, AFB initially expressed appreciation for the efforts of Commission staff to craft creative approaches that would ensure maximum accessibility protections for consumers. It would certainly seem that Commission staff want to do the right thing by people with disabilities. AFB did, however, also express our deep skepticism about the approach described because, ultimately, we believe that such an approach, even if it could survive the Commission's internal vetting process and achieve the hoped-for results, is just as likely to be challenged in court as might any of the other approaches that we and other commenters have urged the Commission to follow.

We are frankly mystified that some within the Commission would now seem to be implying that the NPRM's suggestion that section 205 should be limited to MVPD-provided equipment was not merely an expression of one legitimate option among many but was, in fact, a categorically inappropriate proposal utterly lacking in foundation. Does the Commission not possess expertise to guard against such missteps? Putting it another way, what has changed since the publication of the NPRM? Has the commission's own internal capacity to determine what it has statutory authority to do improved since the NPRM's publication, or are we simply in one of those situations in which enormous outside pressures may compel the commission to own up to a fundamental error which, in fact, it has not made? The answer seems obvious. No, applying section 205 only to MVPD-provided equipment was not, and is not, a fundamental misreading of the CVAA and the Commission's rules.

AFB concluded the meeting by again thanking Commission staff for trying to find ways of preserving the clear congressional intent to transform the video programming experience of people who are blind or visually impaired in America. However, AFB reminded the Commission of the most recent joint ex parte filing by AFB, the Consumer Electronics Association, and the American Council of the Blind which represents, in our view, a balanced approach that both ensures unambiguous CVAA implementation and that also enjoys the declared support of the most invested industry interests.

Respectfully submitted,

Sincerely,



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