

September 3, 2013

BY ELECTRONIC FILING

Marlene H. Dortch
445 12th Street, SW
Room TW-A325
Washington, DC 20554

*Re: Accessibility of User Interfaces, and Video Programming Guides and
Menus MB Docket No. 12-108 – Ex Parte Filing by the American
Foundation for the Blind*

Dear Ms. Dortch:

On behalf of the American Foundation for the Blind (AFB) and the American Council of the Blind (ACB), we are grateful that the Commission's rules allow us to offer this brief ex parte filing which, we hope, will provide further assistance to the Commission as it finalizes its user interface regulations implementing the Twenty-First Century Communications and Video Accessibility Act (CVAA). In particular, we are concerned that, amid the din of discussion around the scope of sections 204 and 205 of the CVAA, consumer expectations about the real world experience of customers with disabilities might not be fully heard. To give clearer voice to these expectations, we want to describe in simple terms what we understand to be the intent and ultimate impact of the CVAA and its implementing regulations.

With regard to equipment made available from cable and satellite providers, consumers expect that a simple, straight forward request for an accessible set-top box or comparable equipment will result in delivery of that equipment promptly (e.g., delivery and installation of accessible equipment at the same time equipment would ordinarily be delivered and installed for customers generally). A cable or satellite provider may either give the consumer a standard device that is accessible or some alternative device that is accessible, provided that the consumer will not be required to pay any additional money for accessible equipment. This means that a consumer asking for the accessible set-top box or other device cannot be required to lease such equipment at a higher rate than would otherwise be required for an inaccessible but less feature rich set-top box. Moreover, consumers expect that their request for accessible equipment is sufficient proof in itself of eligibility for/entitlement to such equipment.

With regard to TV and TV-like equipment, consumers expect that in a few years from now, it will be pervasive and routine for a consumer to obtain equipment that either has built-in accessibility features or that comes equipped "out of the box" to enable accessibility. In that latter instance, however, the accessibility-ready equipment will not require the consumer to obtain hardware or software at additional cost or presume that consumers must use assistive technology; the accessibility-ready equipment will be made fully accessible through some add-on either made available by the equipment's manufacturer directly or indirectly, provided that such add-ons are made available to the consumer contemporaneously with the purchase and at no additional charge. Manufacturers will not be permitted to presume that a consumer already possesses mainstream devices, such as smart phones, which the manufacturer needs to rely on to achieve accessibility; the burden of ensuring accessibility, one way or another, is solely the manufacturer's. The manufacturer must be accountable for the consumer's ultimate ability to acquire and properly install and use add-ons; a manufacturer will not be allowed simply to provide accessibility-ready equipment that depends on the existence of third-party solutions which are not available in fact or which are difficult to locate. When fully implemented, the CVAA will mean that accessible TV and TV-like equipment will saturate the consumer electronics marketplace and be commonly available via retail outlets throughout the country. The practical effect of this saturation will be that consumers without disabilities will be regularly purchasing equipment that they may not even be aware is/can be accessible to people with disabilities.

With regard both to MVPD-provided equipment and to commercially available equipment, consumers expect that accessibility will be the norm and inaccessibility the clear exception. In the hopefully unlikely event that a consumer cannot obtain equipment of the consumer's choosing that is accessible, the consumer is entitled to file a complaint with the Commission. The only circumstance in which the Commission will not find in the consumer's favor is when the target of the complaint can demonstrate that, in addition to satisfying each of the other non-achievability factors, the manufacturer or provider nevertheless makes an array of accessible options available at varying price points. Moreover, with respect to equipment functionality, the so-called eleven essential functions list is the benchmark against which each piece of equipment is evaluated to determine its accessibility. If the TV-like equipment and/or the cable or satellite set-top box provides a consumer with three, or seven, or eleven of the functions in the essential functions array, such functions must be accessible either natively or with some manufacturer or provider delivered no cost add-on.

Finally, we again draw the Commission's attention to our previous filings, as well as the many individual consumer filings and our joint filing with the Consumer Electronics Association, all of which are in harmony with the above understandings. We continue to believe that apportioning MVPD-provided equipment to section 205 and all other TV and TV-like

Page Three
September 3, 2013

equipment to section 204 remains the most defensible approach to the CVAA that also squares with consumer expectations. As always, we are deeply appreciative of the Commission's thoughtful and thorough consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Richert".

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