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October 23, 2013

Ex Parte

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

Re: In re Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108

Dear Ms. Dortch:

Diane Burstein, Vice President and Deputy General Counsel, Stephanie Podey, Associate General Counsel, and I, of the National Cable & Telecommunications Association ("NCTA"), separately met with (1) Matthew Berry, Chief of Staff, Office of Commissioner Pai, and Jeffrey Neumann, Media Bureau on October 21, 2013; and (2) Holly Saurer, Acting Legal Advisor, Office of Commissioner Rosenworcel on October 22, 2013, regarding the Commission's implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA").

At each meeting, we reiterated points discussed in NCTA's comments in the above-captioned proceeding. We explained that on-screen text menus and guides provided by cable operator-supplied "navigation devices" are subject to Section 205 of the CVAA,[1] and that stand-alone cable operator-developed software or "apps" are *not* "navigation devices" subject to the rules.[2] We emphasized that any entity (whether an MVPD or not) "shall only be responsible for compliance with the requirements [of Section 205] with respect to navigation devices *that it provides* to a requesting blind or visually impaired individual."[3] Thus, we stated that if a non-

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1 *See* 47 U.S.C. § 303(bb)(1) (as amended by CVAA § 205(a)); *see also* 47 U.S.C. § 303(aa)(4) (as amended by CVAA § 204(a)) ("in applying this subsection the term 'apparatus' does not include a navigation device, as such term is defined in section 76.1200 of the Commission's rules…").

2 *See* NCTA Comments at 8-10; Letter from Rick Chessen, NCTA, to Marlene Dortch, FCC, filed in MB Dkt. No. 12-108 (Sept. 12, 2013).

3 CVAA § 205(b)(3) (emphasis added).

MVPD provides a navigation device to a consumer (even if pre-loaded at sale with an MVPD app), the non-MVPD would be responsible for providing a requesting consumer with an audibly accessible on-screen text menu or guide. Further, under the CVAA, any entity subject to this obligation must be given "maximum flexibility" to determine how to provide this accessibility (either as part of the navigation device or "through that entity's use of software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution").[4] We also discussed how Section 205(a), codified at 47 U.S.C. § 303(bb)(3)(A)-(B), does not override the clear delineation of ultimate responsibility under Section 205(b)(4). Instead, that provision simply describes how a talking guide solution offered by the responsible entity may contain hardware and software elements that might play a role in ensuring audible accessibility.

In addition, we discussed functional requirements for on-screen text menus and guides, pointing out that Section 205 only requires that "if achievable . . . the on-screen text menus and guides provided by navigation devices . . . for the display or selection of multichannel video programming are audibly accessible in real-time upon request."[5] We expressed concern that expanding the rules to cover functions not included in on-screen text menus and guides, but instead on remote controls (*e.g.*, volume control, power on/off, mute), would exceed the scope of Section 205.

We also proposed that the rules incorporate guidance on eligibility for accessible guides, and pointed to information in the record, including the ex parte jointly filed by NCTA, the American Foundation for the Blind ("AFB"), and the American Council of the Blind ("ACB").[6]

We explained why the Commission should reject requests from some commenters that cable operators and other MVPDs be required to include certain information in their program guides that is not provided today.[7]

As to closed captioning capability, we reiterated our view that Section 205 only applies "upon request" and urged the Commission to provide operators the required "maximum flexibility" to develop a captioning mechanism.[8]

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4 *See* CVAA § 205(b)(4).

5 47 U.S.C. § 303(bb)(1) (as amended by CVAA § 205(a)).

6 *See* Letter from Mark Richert, Director, Public Policy, AFB, Eric Bridges, Director of External Affairs and Policy, ACB, and Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary, FCC (Sept. 12, 2013); *see also* NCTA Comments at 12.

7 *See* NCTA Comments at 11-12; NCTA Reply Comments at 14.

8 *See* NCTA Comments at 16-17; NCTA Reply Comments at 11-12.

Finally, we discussed why smaller cable operators need a longer phase-in period to comply with the requirements.[9] We explained that smaller operators need to rely on the efforts of larger operators to develop these products, and that these smaller operators cannot be expected to receive compliant equipment on the same schedule as larger operators. Providing relief in the form of additional time to comply would impact a relatively small number of MVPD subscribers.[10]

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen

cc: Matthew Berry
Jeffrey Neumann
Holly Saurer

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[9] As NCTA and others have demonstrated, there is sound justification in the record for the Commission to exercise its authority to provide a longer phase-in for cable operators other than the six largest incumbent cable operators. *See, e.g.*, NCTA Comments at 17-19; NCTA Reply Comments at 12-14; Letter from Diane B. Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC (Sept. 12, 2013); ACA Comments at 6-13; Letter from Barbara Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC (Sept. 30, 2013) (attaching letters filed in the record from Cable One, Inc. and WOW! Internet Cable and Phone).

[10] NCTA has proposed that the Commission adopt the approach applied in the BST Encryption proceeding. *See* NCTA Comments at 19, n.64. When compared with the relief provided by the Commission in implementing the CALM Act, the NCTA proposal would extend relief in this context only to systems over 20,000 subscribers served by four additional cable operators.