

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Accessibility of User Interfaces, and Video Programming Guides and Menus	)	MB Docket No. 12-108
	)	
Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010	)	MB Docket No. 12-107
	)	

**PETITION FOR RECONSIDERATION**

**National Association of the Deaf  
Telecommunications for the Deaf and Hard of Hearing, Inc.  
Deaf and Hard of Hearing Consumer Advocacy Network  
Association of Late-Deafened Adults, Inc.  
Hearing Loss Association of America  
California Coalition of Agencies Serving the Deaf and Hard of Hearing  
Cerebral Palsy and Deaf Organization  
Technology Access Program Gallaudet University**

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO) and the Technology Access Program at Gallaudet University (TAP) (collectively, the “Consumer Groups and TAP”), pursuant to Section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules,<sup>1</sup> hereby

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<sup>1</sup> 47 C.F.R. § 1.429.

petition for reconsideration of the Commission’s Report and Order and Further Notice of Proposed Rulemaking, released on October 31, 2013, in the above-referenced proceedings.<sup>2</sup>

The Consumer Groups and TAP seek to promote equal access to telecommunications, including video programming, for the 48 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may fully experience the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution.<sup>3</sup> We applaud the Commission’s important work in adopting rules that implement the accessibility of user interfaces, and video programming guides and menus provisions of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”).<sup>4</sup> These rules represent an important step toward reaching the shared goal of Congress, Consumer Groups, and viewers who are deaf and hard of hearing: to ensure equal access to video programming for all Americans.

## **I. VOICE COMMANDS AND GESTURES ARE NOT COMPLIANT MECHANISMS FOR ACTIVATING THE CLOSED CAPTIONING OR ACCESSIBILITY FEATURES**

The Consumer Groups and TAP respectfully request that the Commission reconsider allowing voice commands and gestures as compliant mechanisms for activating the closed captioning or accessibility features. The CVAA requires digital apparatus as well as navigation devices with built-in closed captioning capability to make the closed captioning and accessibility features accessible “through a mechanism that is reasonably comparable to a button, key, or

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<sup>2</sup> *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus (MB Dkt No. 12-108), In the Matter of Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Dkt. No. 12-107), Report and Order and Further Notice of Proposed Rulemaking, FCC 13-138, released Oct. 31, 2013 (“Order”).*

<sup>3</sup> A recently released study by Johns Hopkins School of Medicine found that more than forty-eight million Americans over the age of twelve—almost one in every five people in this country—are deaf or hard of hearing. See Amanda Chan, 1 In 5 Americans Has Hearing Loss: Study, THE HUFFINGTON POST (Nov. 15, 2011, 4:38 PM EST), [http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-in-five\\_n\\_1095586.html](http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-in-five_n_1095586.html).

<sup>4</sup> Pub. L. 111-260, 124 Stat. 2751 (Oct. 8, 2010) (“CVAA”).

icon.”<sup>5</sup> In the *Order*, the Commission, interpreting this CVAA requirement, determined that “compliant mechanisms include, but are not limited to, the following: a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.”<sup>6</sup> The Commission never explained how voice or gesture controls are reasonably comparable to a button, icon, or key. While in the *Order*, the Commission cited Comments from CEA and NCTA saying that some newer equipment on the market are controlled by voice and gestures, the Commission did not explain how they might be similar to a button, key, or icon.<sup>7</sup> Buttons, icons, and keys, are generally visible and unlike voice or gesture controls, are operated by physical touch. This leap from tactile controls to voice and gesture controls lacks any justification or support under the CVAA, and there is no evidence that Congress intended to allow voice and gesture controls to satisfy these accessibility obligations.

While we do not oppose companies providing new ways to access their devices and apparatus, such as voice controls and gestures, it is unacceptable for the Commission to determine that voice controls or gestures is a compliant mechanism for accessing critical accessibility features.

## **II. THE DISABILITY POPULATIONS THAT THE CVAA WAS INTENDED TO PROTECT CANNOT ACCESS VOICE AND/OR GESTURE CONTROLS**

If the Commission accepts voice and gesture controls as compliant mechanisms, certain disability populations will have greatly reduced access to video programming. For instance, many deaf and hard of hearing people, especially those who communicate through American Sign Language, do not speak or speak clearly enough to use speech recognition technology.

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<sup>5</sup> The Twenty-First Century Communications and Video Accessibility Act of 2010, PL 111-260, at Sections 204(aa)(3) and Section 205(bb)(2).

<sup>6</sup> *Order* at ¶ 81

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

These individuals are unable to use voice controlled technology and will be shut out of any digital apparatus or navigation device where voice commands are the only way to activate the closed captioning control. Allowing voice controls to satisfy accessibility obligations will effectively deny millions of deaf and hard of hearing people access to closed captioning and/or other accessibility features. In fact, pre-CVAA devices/apparatus that require jumping through menus in order to access the closed captioning control, which prompted the need for these very rules, are more accessible than exclusively voice controlled devices/apparatus. This decision by the Commission is a step backwards and is inconsistent with the CVAA.

The Consumer Groups and TAP are also concerned about accepting gesture based controls as compliant accessibility mechanisms. Some deaf and hard of hearing people have additional disabilities and in addition to not being able to use voice controls, may not be able to perform the gestures required to achieve access to the closed captioning or accessibility features. For instance, some deaf and hard of hearing people have cerebral palsy or other mobility disabilities. We also are seriously concerned about the ability of blind and visually impaired people to access critical accessibility features through gestures.

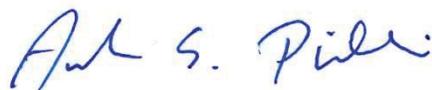
### **III. THE COMMISSION DID NOT PROPERLY ADDRESS WHETHER VOICE AND GESTURE CONTROLS SHOULD OR SHOULD NOT BE COMPLIANT MECHANISMS FOR ACTIVATING THE CLOSED CAPTIONING OR ACCESSIBILITY FEATURES**

A review of the *NPRM* shows that the Commission never proposed a rule nor raised questions regarding whether voice or gesture controls should be acceptable compliant mechanisms for providing legally mandated access to closed captions for people with disabilities

under the CVAA.<sup>8</sup> In the *NPRM*, the only mention of voice controls or gesture controls were in the context of controls used by blind or visually impaired people and not those who are deaf or hard of hearing.<sup>9</sup> Moreover, in the *Order*, the Commission gives no consideration for the accessibility of voice or gesture controls and cites it as an example as a compliant mechanism without support. Never once have voice or gesture controls been discussed in the context of user interface accessibility for deaf and hard of hearing people. If such questions were properly raised in the *NPRM* or any meetings, we would surely have explained how deaf and hard of hearing people who cannot speak clearly cannot access accessibility mechanisms only accessible through voice controls, as well as how gesture controls are inaccessible for certain deaf and hard of hearing people with mobility disabilities.

The Consumer Groups and the TAP strongly urge the Commission to reconsider allowing voice commands and gestures as compliant mechanisms for activating the closed captioning or accessibility features. We are not opposed to companies providing new ways to access their devices and apparatus as long as they are accessible to people with disabilities.

Respectfully submitted,



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<sup>8</sup> *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus (MB Dkt No. 12-108), In the Matter of Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Dkt. No. 12-107)*, Notice of Proposed Rulemaking, FCC 13-77, released May 30, 2013. (“*NPRM*”)

<sup>9</sup> *NPRM* at ¶ 37, footnote 99.

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Dated: January 20, 2014