

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

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

**COMMENTS OF VERIZON AND VERIZON WIRELESS
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

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**COMMENTS OF VERIZON AND VERIZON WIRELESS¹
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Introduction and Summary

The Commission’s recent implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)² will dramatically expand the range of accessible consumer equipment used to access video programming.³ In the *Further Notice of Proposed Rulemaking* (“FNPRM”) regarding Sections 204 and 205 equipment, the Commission has asked a series of questions on whether it should expand the obligations imposed on Multichannel Video Programming Distributors (“MVPDs”) and manufacturers of such equipment. Verizon recommends generally that the Commission allow time to judge the

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly-owned subsidiaries of Verizon Communications Inc. (collectively, “Verizon”).

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, §§ 204-205 (Oct. 8, 2010), codified at 47 U.S.C. §§ 303(aa-bb).

³ See *Accessibility of User Interfaces, and Video Programming Guides and Menus, et al., Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd 17330 (2013) (“*Report & Order*” and “*FNPRM*”).

effectiveness of its new rules before it considers adopting additional obligations for MVPDs and manufacturers. Specifically, Verizon recommends that the Commission find:

- If the Commission adopts “usability” requirements for Section 205, then it should tailor those requirements to the unique posture of CVAA requirements for “audibly accessible” programming guides on navigation devices.
- The notice requirements for MVPDs regarding the availability of accessible solutions for programming guides are sufficient as adopted in the *Report and Order*, and the Commission should evaluate the effectiveness of the existing notices before adding to them.
- Sections 204 and 205 require covered equipment to include only a mechanism to activate a built-in closed captioning capability (and video description in the case of Section 204 apparatus) that is “reasonably comparable to a button, key, or icon,” and do not authorize similar mechanisms for other accessibility features.
- MVPDs must be allowed to determine the content of their video programming guides; neither Section 205 nor any other provision of the Communications Act authorizes the Commission to regulate such content.

Following these recommendations will best ensure that the rules adopted in the *Report and Order* are implemented in a timely and efficient manner.

I. IF THE COMMISSION IMPORTS “USABILITY” REQUIREMENTS FOR SECTION 205, IT MUST RECOGNIZE THE UNIQUE SCOPE OF THE OBLIGATIONS RELEVANT TO “AUDIBLY ACCESSIBLE” PROGRAMMING GUIDES.

The Commission asks whether it should adopt “usability” standards for Section 204 and 205 equipment similar to those in its existing rule Sections 6.3 and 6.11.⁴ As the Commission notes, Section 204 requires that the user functions on covered apparatus must be “accessible to and usable by” consumers who are blind or visually impaired. When Congress has used similar “usable by” language in other sections of the CVAA, the Commission has applied its usability standards to the covered products. Verizon has no objection to the Commission applying these same standards in the context of Section 204.

⁴ See 47 C.F.R. §§ 6.3, 6.11; *FNPRM*, ¶¶ 138-139.

On the other hand, Section 205 requires only that programming guides on navigation devices be made “audibly accessible” to blind and visually-impaired consumers, rather than “audibly accessible to and usable by.” Accordingly, the Commission asks whether it should use the general rulemaking authority in Section 205 to apply the same usability standards to Section 205.⁵

Of course, “audibly accessible” programming guides must also be “usable by” blind and visually-impaired consumers in that there must be instructional materials, customer service support and the like to enable meaningful usage by such consumers. Verizon notes, however, in addition to the fact that Congress did not use the term “usable by” in this context, that audibly accessible programming menus and guides will likely be *sui generis* in that they must be designed to audibly convey information in a manner that may not parallel at all the original on-screen menu or guide.⁶ Therefore, the usability obligation may involve more than just making existing documentations and manuals accessible to blind and visually-impaired consumers. Such materials may have to be designed specifically for the products developed for Section 205, and the scope of achievability and “usability” for these “audibly accessible” products must be judged in that light.

Moreover, Section 205, unlike Section 204, assigns liability for creating “audibly accessible” programming menus and guides to potentially one or more among equipment manufacturers, software manufacturers and MVPDs.⁷ Accordingly, the Commission must ensure

⁵ See CVAA § 205(b) (mandating that the Commission “prescribe such regulations as are necessary to implement the amendment made by subsection (a)”).

⁶ See *Report & Order*, ¶ 71 (audibly accessible guide must provide the same information but does not need to replicate the on-screen text).

⁷ See *id.*, ¶¶ 45-47 (explaining range of entities who are liable under Section 205); CVAA § 205 (a) (“With respect to apparatus features and functions delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software. With respect to apparatus features and functions delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.”); *id.* § 205(b)(3) (“An

that any “usability” requirements impose responsibility with the entity responsible for compliance with implementing the corresponding Section 205 features and functionalities of the “audibly accessible” programming guides. Consistent with Congressional intent, the entity responsible for the features and functions related to “audible accessibility” should also be responsible for “usability” of those features and functions, and any rules adopted to implement “usability” should conform to that statutory principle and the Commission’s rules assigning such responsibility.⁸

II. THE COMMISSION SHOULD FIND SUFFICIENT AT THIS TIME THE EXISTING NOTICE REQUIREMENTS FOR MVPDS REGARDING THE AVAILABILITY OF ACCESSIBLE PROGRAMMING GUIDES.

As Verizon pointed out in its comments on the Commission’s initial *NPRM*,⁹ no provision in Section 205 requires MVPDs to provide notice to consumers regarding the availability of accessible navigation devices or describes what form or format such notices should take.¹⁰ Despite this lack of legislative direction, the Commission adopted notice requirements for MVPDs, one in the context of telephonic discussions with consumers about the availability of products and services, and another on-line at an MVPD’s website.¹¹ In the *FNPRM*, the Commission asks whether it should adopt notice requirements in additional contexts, e.g., on monthly bills, or as annual bill notices.¹²

The Commission should not adopt additional notice requirements for MVPDs because it is sheer speculation at this time whether these additional contexts would be necessary or useful

entity shall only be responsible for compliance with the requirements added by this section with respect to navigation devices it provides to a requesting blind or visually impaired individual.”).

⁸ 47 C.F.R. §§ 79.108(a)(4)-(5).

⁹ See *Accessibility of User Interfaces, and Programming Guides and Menus*, Notice of Proposed Rulemaking, 28 FCC Rcd 8506 (2013) (“*NPRM*”).

¹⁰ Comments of Verizon and Verizon Wireless, MB Dkt. No. 12-108, at 13-14 (July 15, 2013).

¹¹ See *Report & Order*, ¶¶ 133-134; 47 C.F.R. § 79.108(d).

¹² See *FNPRM*, ¶¶ 148-149.

after these products are deployed in 2017 and beyond.¹³ First, the competitive market will ensure that all features and functions available to consumers will be advertised in some format. Once Section 205 navigation devices are being deployed, MVPDs have every incentive to market them to existing and new customers. Second, MVPDs are in the best position to determine how visually-impaired consumers find information about their respective accessible navigation devices, and to evaluate those contexts for additional notices that may be useful. By selecting some arbitrary context for notices, the Commission may simply add expense to an MVPD's advertising or billing budget without any evidence to suggest such contexts would be usefully accessed by visually-impaired consumers.

Third, the Commission is wrongly focused on using *Twentieth Century* technology (paper bills and bill notices) in the context of the *Twenty-First Century Communications and Video Accessibility Act*. Most consumers investigating information on accessible equipment will research on-line sources, rather than trying to find a bill with a notice. Moreover, existing customers have a relationship with the MVPD and most likely would call customer service to ask about accessible options whenever they feel it necessary, rather than waiting for an annual bill notice. The Commission has already covered the most likely contexts for consumers to seek out information on accessible equipment formats. It cites no evidence that additional contexts would be necessary, used or useful. Further, on-line websites and customer services offer a much better opportunity to provide useful information rather than the limited space for a notice on a billing statement.

The Commission has already gone beyond the language of the CVAA by imposing notice requirements on MVPDs. It should not speculate about how useful still more notice

¹³ MVPDs must meet the accessibility requirements of Section 205 for navigation devices manufactured after December 20, 2016. See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Final Rule, 78 Fed. Reg. 77210 (Dec. 20, 2013).

requirements will be in three years when electronic presences will almost certainly have bypassed paper bills and notices. At the least, the Commission should find the existing notice requirements sufficient at this time, and evaluate the effectiveness and availability of information on accessible programming guides and navigation devices after such equipment has been deployed into the streams of commerce in 2017 and beyond.

III. SECTIONS 204 AND 205 DO NOT MANDATE ADDITIONAL MECHANISMS REASONABLY COMPARABLE TO A BUTTON, KEY, OR ICON.

In new Section 79.109 of its rules, the Commission requires that Section 204 apparatus feature a mechanism “reasonably comparable to a button, key, or icon” to activate built-in closed captioning and video description capabilities, and Section 205 devices feature a mechanism “reasonably comparable to a button, key, or icon” to activate built-in closed captioning capability. These rules are mandated by Congress in Sections 204 and 205.¹⁴

In the *FNPRM*, the Commission has asked whether it can require “a mechanism reasonably comparable to a button, key, or icon” to activate “accessibility features” other than closed captioning on Section 205 devices, or in the case of Section 204, other than closed captioning and video description.¹⁵ The Commission should not adopt such requirements because they are premised on an inaccurate reading of the relevant portions of Sections 204 and 205 and are contrary to the intent of Congress as set forth in these sections.

The statutory language in Section 205 requires “for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.”¹⁶ This language does not give the Commission broad discretion to

¹⁴ See 47 U.S.C. §§ 303(aa)(3), 303(bb)(2).

¹⁵ See *FNPRM*, ¶¶ 140-143.

¹⁶ 47 U.S.C. § 303(bb)(2).

require more than one mechanism “reasonably comparable to a button, key, or icon” to activate various accessibility features. Rather, Section 205 requires one such mechanism for “access to *that* capability,” referring to “built-in closed captioning capability.” The plain language indicates that the “built-in closed captioning capability” must be activated by one mechanism reasonably comparable to a mechanism that is used for activating either closed captioning capability or accessibility features generally. The language simply does not contemplate multiple mechanisms for activating multiple capabilities.

Similarly, while Section 204 refers specifically to closed captioning and video description,¹⁷ it does not open the door to mechanisms to activate additional accessibility features beyond those two. Again, the statute refers only to mechanisms to activate “built in access to *those* closed captioning and video description features,” rather than activating any accessibility feature.¹⁸

Congress granted manufacturers and other entities providing Section 204 and 205 equipment the flexibility to determine the technical solutions for compliance¹⁹ and, in the case of Section 205, “maximum flexibility” to determine the means of compliance with this requirement on navigation devices.²⁰ Congress clearly did not want the Commission to micromanage the technical solutions implementing the accessibility features on Sections 204 and 205 equipment. Accordingly, the Commission should conclude that Section 79.109 fully implements these provisions of Sections 204 and 205 regarding activation mechanisms for closed captioning and video description, and so, it cannot adopt additional mechanisms “reasonably comparable to a button, key, or icon” for other accessibility features.

¹⁷ See 47 U.S.C. § 303(aa)(3).

¹⁸ See *id.*

¹⁹ See 47 U.S.C. §§ 303(aa)(1), 303(bb)(1).

²⁰ See CVAA § 205(b)(5).

IV. NEITHER THE CVAA NOR OTHER PROVISIONS OF THE ACT AUTHORIZE REGULATION OF THE CONTENT OF MVPD PROGRAMMING GUIDES.

A number of local franchising authorities (“LFAs”) have asked the Commission to use Section 205 or other statutory authority to require MVPDs to insert substantive information concerning Public, Educational and Governmental (“PEG”) channel programming into their on-screen programming guides.²¹ Such action is absolutely barred—neither Section 205 nor any other provision of the Communications Act authorizes the Commission to adopt such requirements.

In its *Report and Order*, the Commission recognizes that Section 205 of the CVAA does *not* authorize it to impose substantive content requirements on MVPD programming guides. “[T]his section [47 U.S.C. § 303(bb)(1)] requires that *if* there is text in a menu or programming guide on the screen, then *that text* must be audibly accessible, but it does not impose requirements with regard to what substantive information must appear in the on-screen text.”²² Accordingly, the CVAA provides no authority for the Commission to adopt content requirements for the description of PEG channels on an MVPD’s programming guide.

Moreover, as the Commission notes in the *Report and Order*, the description of PEG channels is not a Section 205 issue at all because the proponents of such regulation want the descriptions inserted into the visible programming guide, not simply the “audibly accessible” guide mandated by Section 205.²³ Therefore, as an initial matter, this issue is not germane to this proceeding. Indeed, the Commission has an open docket on PEG programming issues, in which it may pursue further consideration, if at all.²⁴

²¹ See *FNPRM*, ¶ 144.

²² *Report & Order*, ¶ 75 (emphasis in original).

²³ See *id.*

²⁴ See *The Alliance for Community Media et al.; City of Lansing, Michigan, and City of Dearborn, Michigan et al., Petitions for Declaratory Ruling Regarding Public, Educational and Governmental Programming*, CSR-8126, CSR-8127, CSR-8128, MB Dkt. No. 09-13.

However, the Commission should not pursue this issue further because no other provision of the Act authorizes the Commission to act on this request. Section 624(f)(1) [47 U.S.C. § 544(f)(1)] precludes the Commission and LFAs from imposing “requirements regarding the provision or content of cable services” unless expressly authorized in Title VI. The content of programming guides is not regulated by Title VI. Similarly, Section 611 of the Act [47 U.S.C. § 531] allows an LFA to require a cable operator to provide channel capacity for PEG programming. However, Section 611 gives neither the Commission nor the LFA any authority to dictate how such programming will be described in the cable operator’s programming guide.²⁵ And, Section 611 states that the authority offered to LFAs is “only to the extent provided in this section.”

Underlying First Amendment considerations also should lead the Commission to reject the proposals of the LFAs. As a general matter, the Commission cannot regulate providers’ speech except in those limited situations where it has been specifically authorized to do so by Congress within the constitutional boundaries for government action.²⁶ In the context of MVPD programming guides, which are a form of speech by providers, Congress has granted no such authority. Indeed, the text of Section 303(bb)(1), as correctly read by the Commission in the *Report and Order*, strongly negates any suggestion that Congress intended for the Commission to address content matters through the CVAA, other than re-instituting its video description rules that were previously vacated as inappropriate content regulation.²⁷

Moreover, if it were to impose such content requirements based on some other provision of the Act, the Commission would violate the statutory prohibition in Section 205 that it “may

²⁵ These provisions do not preclude the LFA and cable operator from coming to terms otherwise in the franchise agreement itself.

²⁶ See, e.g., *Motion Picture Ass’n of America v. FCC*, 309 F.3d 796, 803-07 (D.C. Cir. 2002).

²⁷ See *id.* at 807.

not specify the technical standards, protocols, procedures, and other technical requirements for” making programming guides audibly accessible. As described below, the design of an on-screen programming guide may depend on the design of the MVPD’s network. Dictating content in the programming guide would impose technical design requirements on the network and on the audible programming guide, contrary to the express language of Section 205. Therefore, regulating the content of programming guides is not authorized under Section 205, and is expressly forbidden.

Even though the Commission has no authority to order MVPDs to include specific information about PEG channels in their programming guides, it should be aware that doing so would impose significant costs on MVPDs that may ultimately redound to the detriment of subscribers, including those seeking the accessibility information. PEG channels are generally specific to a certain community or LFA. In some contexts, when a cable system delivers programming geared to a specific LFA, it may insert descriptions for the individual PEG channels into whatever programming guide the cable operator offered to that community.

However, advanced MVPD networks are not built to correspond to the boundaries of individual communities or LFAs, and providing community-specific information for PEG channels delivered over such systems is not practical. By developing program distribution networks that encompass broader geographies, an MVPD can design a more efficient network that lowers equipment costs, thereby benefiting consumers through competitive service offerings and pricing. Indeed, the Commission has repeatedly sought to encourage new technologies and new entrants into the video marketplace, and in so doing, has not attempted to replicate the original cable service model. Regulations imposing significant new costs on network design would serve no purpose other than to unduly burden competitive entrants with more efficient

technologies for delivering video programming. The Commission should, therefore, continue to promote new cable products and services with only such regulation as is necessary, rather than conjuring up unnecessary and burdensome regulations based on some older cable service model.

Verizon's fiber-optic-based FiOS video service is a prime example of a competitive MVPD service using newer technology to deliver programming more efficiently to subscribers. In the FiOS network architecture, the delivery of PEG channel programming to subscribers is based in the Video Service Office ("VSO") while the Interactive Media Guide ("Guide") is based in the Video Home Office, which serves multiple VSOs. All PEG channels are identified as local programming in the Video Home Office, and generally appear in the same Electronic Industries Association and Moving Picture Experts Group number across the Video Home Office. Thus, while subscribers in various VSOs receive the appropriate PEG channel programming for that VSO, Verizon populates only one description of such programming across the Video Home Office and in the Guide.

Creating new network regions to insert descriptions in the Guide for each LFA and its PEG channels served by a Video Home Office would have a major impact on the FiOS network architecture and costs of doing business. Defining a new region for an LFA would require, at the least, a separate combiner network for the Broadband Media Router and additional radio frequency transmitters and fiber amplifiers dedicated to the new region. Such a configuration would increase the complexity of network management and troubleshooting across the network, and would require a lengthy process to migrate customers to appropriate equipment at the VSOs serving their respective LFAs. The cost of the equipment, staff hours and on-going network management complexities would be significant, and could potentially be passed on to customers.

While there is no provision of the CVAA or the Act that authorizes the Commission to impose content requirements on programming guides, there is also no provision that allows the Commission to dictate an MVPD's network design, which such substantive programming requirements would, as described above. Other methods are available for LFAs to make PEG channel information available to consumers, including posting information on the Internet concerning PEG programming. Thus, there is not only no legal reason for the Commission to pursue this issue, there is also no need to consider insisting on substantive requirements for PEG channel descriptions in programming guides.

V. CONCLUSION.

To best effectuate the intent of Congress, the Commission should implement its proposals in the *FNPRM* for CVAA Sections 204 and 205 in a manner consistent with the comments outlined above.

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