

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

In the Matter of)	
)	
Accessibility of User Interfaces, and)	MB Docket No. 12-108
Video 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)	

**OPPOSITION BY ENTERTAINMENT SOFTWARE ASSOCIATION TO
PETITION FOR RECONSIDERATION BY NATIONAL ASSOCIATION OF THE DEAF, ET AL.**

Consumers should have ready access to features essential to making video programming more accessible, as set forth in Sections 204 and 205 of the Twenty First Century Communications and Video Accessibility Act (“CVAA”).¹ Consistent with that goal and the CVAA provisions that direct the Commission to offer flexibility to covered entities,² the Commission was right to focus on the “simplicity and ease of use of the mechanism” in determining what qualifies as being “reasonably comparable to a button, key, or icon” under CVAA Sections 204 and 205.³ The Commission also properly identified “voice commands” and “gestures” within its

¹ See Pub. L. No. 111-260, §§ 204 & 205, as codified in 47 U.S.C. §§ 303(aa) & (bb); *Accessibility of User Interfaces, and Video Programming Guides and Menus; 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17381-82 (¶ 81) (2013) (“*User Interfaces Order*”).

² See *User Interfaces Order*, 28 FCC Rcd at 17381 (¶ 80).

³ *User Interfaces Order*, 28 FCC Rcd at 17380, 17381-82 (¶¶ 79 & 81).

examples of compliant mechanisms for accessing covered accessibility features.⁴ Contrary to the pending Petition for Reconsideration,⁵ the Commission should not alter this clear guidance, which is consistent with the intent and statutory text of the CVAA.

As commenters noted during the underlying proceeding, voice and gesture controls can be simple and as easy to use as a button, key, or icon.⁶ A person who is visually impaired may find voice control easier than physical buttons.⁷ Certain gesture controls may be easier for individuals with other disabilities. Recognizing the potential of these technologies to simplify access for all consumers, many in the consumer electronics industry, including makers of game consoles, have invested substantial research and development effort in implementing voice and gesture controls for their various devices.

⁴*User Interfaces Order*, 28 FCC Rcd at 17382 (¶ 81).

⁵ See National Association of the Deaf, *et al.*, Petition for Reconsideration, MB Docket Nos. 12-107 & 12-108 (submitted Jan. 20, 2014) (“Petition”).

⁶ See, e.g., Comments of Consumer Electronics Association at 20 (submitted July 15, 2013); Comments of the Information Technology Industry Council at 7 (submitted July 15, 2013). These and other comments, which were cited in the *User Interfaces Order*, see *User Interfaces Order*, 28 FCC Rcd at 17381 n. 309, underscore that voice and gesture controls were appropriately raised with respect to the “button, key, or icon” language during the initial proceeding. See also Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming Guides and Menus, at 16 (submitted April 9, 2012) (“Second Report”) (available at: <http://apps.fcc.gov/ecfs/document/view?id=7021913531>) (referring to voice commands and gestures as possible examples of activation mechanisms). Unless otherwise noted, all comments cited herein were submitted in response to the Notice of Proposed Rulemaking in these dockets. See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, 28 FCC Rcd 8506 (2013).

⁷ In this context, it is relevant that this “reasonably comparable to a button, key, or icon” requirement in what is now Section 303(aa)(3) applies to apparatus subject to Section 303(aa)(1) and (2), both of which focus on the accessibility of devices for “individuals who are blind or visually impaired.” 47 U.S.C. § 303(aa)(1) & (2).

Early experimentation with these technologies shows promise for facilitating access by persons with disabilities as well as other consumers:

- Researchers at Microsoft are harnessing a sophisticated sensor, the Kinect, to translate sign language into spoken words and vice versa.⁸ That research grew out of technology developed for the game industry to enable controller-free game play. The Kinect peripheral for the Xbox 360 and Xbox One game consoles is packed with a suite of sensors to capture visual and articulation data simultaneously.
- Gesture controls can help give voice to the voiceless. Steve Gleason is a former NFL player afflicted with ALS, a disease that has severely limited his mobility and has taken away his speech. But technology is making it easier for him to communicate. Using a specialized Microsoft Surface Pro tablet equipped with eye-tracking software, Steve uses his eye movements to compose messages on a virtual keyboard, and the computer then translates those into spoken words.⁹

The Commission should encourage the further development of these technologies by retaining voice and gesture controls on its non-exclusive list of compliant activation mechanisms. As the Commission understood when it issued the order, allowing voice commands and gestures to remain on the list of compliant mechanisms will encourage future experimentation with these technologies to meet CVAA requirements and to otherwise benefit the public.

The statutory text affirms that Congress did not require “physical touch” to be a necessary prerequisite for an acceptable activation mechanism. The statutory text did not identify any physical characteristic necessary for a mechanism to be “reasonably comparable to a button, key, or icon.”¹⁰ That CVAA Sections 204 and 205 identify icons as a satisfactory mechanism further confirms that such mechanisms are not required to be tactile. On devices

⁸ Microsoft Research, *Opening new doors of communication for sign language users*, <http://research.microsoft.com/apps/video/default.aspx?id=204209>.

⁹ Microsoft, *Empowering Us All*, <http://www.microsoft.com/en-us/news/stories/empoweringusall/index.html>.

¹⁰ 47 U.S.C. §§ 303(a)(3) & (b)(2).

without touch-sensitive screens, icons may not be activated through physical touch, but instead may be selected through one or more specific movements or gestures. Sometimes, these movements may require gesturing with a physical controller, such as a mouse, to select the correct icon. Other times, depending on the relevant technology, a consumer may highlight and activate icons (or other virtual on-screen items) through gestures alone.¹¹ Since the relevant statutory provision, by its terms, authorizes icons and, inherently, any gestures used to select and trigger those icons, it would be unreasonable to read the statute as having foreclosed gestures generally.

In April 2012, the Video Programming Access Advisory Committee (“VPAAC”) also indicated that voice or gesture controls may be satisfactory mechanisms under CVAA Sections 204 and 205. In a report submitted to the Commission, VPAAC noted, as one in a series of illustrative examples, that “Closed Caption and Video Description activation might be accessed through a button, key, icon, gesture, voice command, etc.”¹² Although the Second Report noted that VPAAC representatives had not reached consensus on the broader issue of what was required by the “reasonably comparable” language of CVAA Sections 204 and 205,¹³ the express mention of voice commands and gesture controls in the Second Report further

¹¹ See, e.g. <http://support.xbox.com/en-US/xbox-one/kinect/common-gestures> (describing how the user may select an on-screen tile or item through hand motions and then “hover” over the relevant item to activate the feature) (last viewed on February 16, 2014).

¹² See Second Report at 15-16 (available at <http://apps.fcc.gov/ecfs/document/view?id=7021913531>).

¹³ See *id.* at 20-21; *User Interfaces Order*, 28 FCC Rcd at 17381 n. 311.

supports the Commission’s determination that these types of controls may be “relatively simple for consumers to use,” and thus reasonably comparable to a button, key, or icon.¹⁴

No single control mechanism will be ideal for all users. Some allowance should be made for manufacturers to develop different solutions, which then enable users to select among the choices in the marketplace.

For these and other reasons, the Commission should affirm its *User Interfaces Order* and continue to include vocal commands and gestures, among other potential solutions, as compliant mechanisms pursuant to CVAA Sections 204 and 205.

Respectfully submitted,

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¹⁴ *User Interfaces Order*, 28 FCC Rcd at 17381 (¶ 80).

CERTIFICATE OF SERVICE

I, Judy Norris, legal secretary with the firm Holland & Knight LLP, hereby certify that, on February 18, 2014, a copy of the foregoing Opposition to the Petition for Reconsideration was sent by first class U.S. mail, postage prepaid, to the following persons, as set forth in the Petition for Reconsideration and pursuant to the Commission's Rules:

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