

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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)	MB Docket No. 12-107
Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010)	
)	

**COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

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ASSOCIATION**

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	THE COMMISSION SHOULD APPLY ITS EXISTING DEFINITION OF “USABLE” TO “APPROPRIATE” BUILT-IN APPARATUS FUNCTIONS	2
III.	THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL INFORMATION, DOCUMENTATION, AND TRAINING REQUIREMENTS ON ENTITIES THAT ARE SUBJECT TO SECTIONS 303(aa) AND 303(bb) OF THE ACT	4
IV.	SECTIONS 303(aa)(3) AND 303(bb)(2) OF THE ACT DO NOT AUTHORIZE THE COMMISSION TO IMPOSE BROAD REQUIREMENTS ON USER CONTROLS FOR CLOSED CAPTION DISPLAY SETTINGS	6
V.	THE COMMISSION SHOULD NOT READ INTO SECTION 203 OF THE CVAA THE “REASONABLY COMPARABLE TO A BUTTON, KEY OR ICON” LANGUAGE OF SECTIONS 204 AND 205	8
VI.	A WEBSITE CONSUMER NOTIFICATION REQUIREMENT FOR NAVIGATION DEVICE MANUFACTURERS COULD BE REASONABLE, BUT THE COMMISSION SHOULD NOT IMPOSE A LABELING REQUIREMENT	9
VII.	CONCLUSION.....	11

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I. INTRODUCTION AND SUMMARY

The Consumer Electronics Association (“CEA”)¹ hereby comments on the Further Notice of Proposed Rulemaking (“*FNPRM*”) released by the Commission in conjunction with its Report and Order (“*Order*”) in the above-captioned proceeding.² The *Order* implemented accessibility requirements for user interfaces on digital apparatus and video programming guides and menus on navigation devices, pursuant to Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“*CVAA*”).³

¹ CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multinational corporations to specialty niche companies, CEA members cumulatively generate more than \$208 billion in annual factory sales and employ tens of thousands of people.

² See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013). CEA refers to ¶¶ 12-137 of the forgoing item as the “*Order*” and ¶¶ 138-52 as the “*FNPRM*.”

³ Pub. L. No. 111-260, §§ 204-05, 124 Stat. 2751, 2773-76 (2010) (“*CVAA*”) (codified at 47 U.S.C. §§ 303(aa), (bb), and note); An Act to make technical corrections in the Twenty-First

CEA commends the Commission’s efforts in the *Order* to craft focused and reasonable user interface accessibility rules that reflect the plain language of Sections 204 and 205. CEA appreciates the importance of making user interfaces accessible to the individuals that Sections 204 and 205 were intended to accommodate. CEA and its member companies are committed to working with the Commission, disability organizations, and individuals with disabilities to facilitate increased access to user interfaces used to view video programming on digital apparatus and navigation devices.

In considering the remaining issues posed in the *FNPRM*, the Commission should avoid imposing regulations not required by the CVAA. Unnecessary and overly prescriptive regulations will stifle innovation and limit manufacturers’ flexibility in bringing cost-effective consumer devices to the American people. Thus, the Commission should be guided by the following principles in resolving the issues raised in the *FNPRM*:

- The plain language of Sections 204 and 205 best indicates statutory intent.
- As expressly recognized by Congress in the CVAA, industry must have flexibility in complying with the requirements of Sections 204 and 205, as codified in Sections 303(aa) and 303(bb) of the Communications Act of 1934 (the “Act”), to ensure both improved accessibility and continuing innovation in the development of new products.

II. THE COMMISSION SHOULD APPLY ITS EXISTING DEFINITION OF “USABLE” TO “APPROPRIATE” BUILT-IN APPARATUS FUNCTIONS

The Commission should rely on the definition of “usable” in Section 6.3(l) of its rules⁴ for purposes of implementing Section 303(aa) of the Act. As the *FNPRM* notes, the definition of “usable” in Section 6.3(l) is “well established,” and the Commission consistently has applied this

Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act, Pub. L. No. 111-265, 124 Stat. 2795 (2010).

⁴ See 47 C.F.R. § 6.3(l).

definition in other CVAA contexts.⁵ Applying that definition in the present context would provide clarity and certainty to manufacturers of digital apparatus, particularly given that many of them already have experience developing products according to that standard. Relying on the definition of “usable” in Section 6.3(l) also would be consistent with the *Order*’s reliance on the relevant portions of Section 6.3(a) of the rules to define “accessible.”⁶

However, the Commission should clarify that the usability standard of Section 6.3(l) applies only with respect to the “appropriate” built-in functions of covered digital apparatus, and only to the extent the apparatus includes those functions. This would be consistent with the *Order*’s approach to implementing the accessibility requirements for digital apparatus.⁷

Section 303(aa) of the Act and the Commission’s implementing rules require that “control of *appropriate built-in apparatus functions*” be accessible to and usable by individuals who are blind or visually impaired.⁸ As the *Order* states, “the 11 essential functions identified in the *VPAAC Second Report: User Interfaces* are the ‘appropriate’ built-in apparatus functions ... that must be made *accessible* to individuals who are blind or visually impaired pursuant to Section 204 if these functions are included in the device.”⁹ The Commission should adopt the

⁵ *FNPRM*, 28 FCC Rcd at 17414, ¶ 138; see *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14605, ¶ 115 (2011); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Second Report and Order, 28 FCC Rcd 5957, 5967, ¶ 19 (2013).

⁶ See *Order*, 28 FCC Rcd at 17370-71, ¶ 62.

⁷ See *id.* at 17369-70, ¶ 60 (“[T]o the extent that an apparatus is designed to include an “appropriate” built-in apparatus function, such function must be made accessible in accordance with our rules.”).

⁸ 47 U.S.C. § 303(aa) (emphasis added); see also 47 C.F.R. § 79.107(a).

⁹ *Order*, 28 FCC Rcd at 17366, ¶ 58 (emphasis added).

same approach with respect to “usability,”¹⁰ making clear that the 11 essential functions identified by the VPAAC are the “appropriate” built-in apparatus functions that must be made *usable* by individuals who are blind or visually impaired if these functions are included in the device.

III. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL INFORMATION, DOCUMENTATION, AND TRAINING REQUIREMENTS ON ENTITIES THAT ARE SUBJECT TO SECTIONS 303(aa) AND 303(bb) OF THE ACT

There is no need for the Commission to adopt stand-alone information, documentation, and training requirements to implement Sections 303(aa) and 303(bb).¹¹ Applying the existing definition of “usable” to appropriate built-in apparatus functions will help achieve the objectives of Section 303(aa) without additional requirements for information, documentation, and training, and imposing such requirements under Section 303(bb) is unwarranted.

Instead of imposing additional information, documentation, and training requirements on entities covered by Section 303(aa), the Commission should adopt and rely on the definition of “usable” in Section 6.3(l) in the manner described above. That definition already expressly covers information and documentation requirements, so additional requirements are unnecessary. Under the Commission’s existing definition, “usable” means that “individuals with disabilities have access to the full functionality and documentation for the product, *including instructions, product information (including accessible feature information), documentation and technical support* functionally equivalent to that provided to individuals without disabilities.”¹² CEA members are well aware that, to satisfy this standard, individuals with disabilities must have

¹⁰ See *FNPRM*, 28 FCC Rcd at 17413-14, ¶ 138.

¹¹ See *id.* at 17414-15, ¶ 139.

¹² 47 C.F.R. § 14.21(c) (emphasis added); see *id.* § 6.3(l).

adequate access to information in product manuals, and employees must receive sufficient training in compliance with these requirements.

Similarly, additional information, documentation, and training requirements are not needed to achieve the objectives of Section 303(bb). As an initial matter, Section 303(bb) does not contain the “accessible to and usable by” language upon which the Commission previously has based its information, documentation, and training requirements when implementing other provisions of the CVAA.¹³ Unlike those provisions, Section 303(bb) focuses more narrowly on the provision of audibly accessible multichannel video programming guides and menus to requesting blind and visually impaired individuals and a mechanism for activating closed captioning that is reasonably comparable to a button, key, or icon.¹⁴ Broad information, documentation, and training requirements are neither necessary to implement these focused requirements¹⁵ nor authorized by statute.¹⁶ Moreover, given the rules implementing “upon request” and requiring consumer notification,¹⁷ it would be redundant for the Commission to impose additional information, documentation, and training requirements.

¹³ Cf. 47 U.S.C. § 303(bb), *with id.* §§ 617(a)-(b), 619(a).

¹⁴ *See id.* § 303(bb).

¹⁵ *See FNPRM*, 28 FCC Rcd at 17414-15, ¶ 139.

¹⁶ Had Congress wished to regulate both Section 303(aa) and 303(bb) devices in the same way, it could have covered them both in a single section, or used identical language in companion sections where appropriate. The juxtaposition of differing terms within two adjacent sections of the same statute is a clear sign that Congress in fact intended to authorize different outcomes. This is consistent with the *expressio unius* canon of statutory construction, which holds that “to express or include one thing implies the exclusion of the other, or of the alternative.” *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992, 999 n.5 (D.C. Cir. 2013). While application of this canon is not robotic, the D.C. Circuit has found “its use is appropriate when ‘one can be confident that a normal draftsman when he expressed the one thing would have likely considered the alternatives that are arguably precluded.’” *Id.* at 999 (quoting *Shook v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998)) (internal quotation marks omitted).

¹⁷ 47 C.F.R. § 79.108(a)(5), (d).

IV. SECTIONS 303(aa)(3) AND 303(bb)(2) OF THE ACT DO NOT AUTHORIZE THE COMMISSION TO IMPOSE BROAD REQUIREMENTS ON USER CONTROLS FOR CLOSED CAPTION DISPLAY SETTINGS

Sections 303(aa)(3) and 303(bb)(2), by their terms, do not permit the Commission to extend the user control activation mechanism requirements broadly to user display settings for closed captioning.¹⁸ Those provisions require only that covered devices provide a means for activating specific features through a mechanism that is “reasonably comparable to a button, key, or icon.”¹⁹

Sections 303(aa) and 303(bb) each apply to particular features that Congress intended for the Commission to address in its rules, and those features are the only ones for which the Commission is authorized to require a mechanism “reasonably comparable to a button, key, or icon.” Section 303(aa)(3) identifies built-in closed captioning and video description capability as two features of digital apparatus that must have the required user control activation mechanism.²⁰ Section 303(bb)(2) identifies built-in closed captioning capability as the only navigation device feature that must have the required user control activation mechanism.²¹ Therefore, these are the only features for which the Commission can require a mechanism that is “reasonably comparable to a button, key, or icon.”

Although some urge the Commission to adopt a strained reading of the phrase “or accessibility features” in order to impose a mandate on user controls for closed caption display settings, that phrase does not authorize the Commission to extend the user control requirements

¹⁸ See *FNPRM*, 28 FCC Rcd at 17415-17, ¶¶ 140-43.

¹⁹ 47 U.S.C. § 303(aa)(3), (bb)(2).

²⁰ *Id.* § 303(aa)(3).

²¹ *Id.* § 303(bb)(2).

to closed caption display settings or other features not specifically identified in the statute.²² Rather, the phrase “or accessibility features” merely describes an activation mechanism — *i.e.*, a mechanism for activating multiple accessibility features — to which the mandated user control mechanism for closed captioning (and video description in Section 303(aa)(3)) may be reasonably comparable to satisfy the requirements of the statute.²³ Given its knowledge of Commission efforts to provide viewers with the tools to control the appearance of closed captioning,²⁴ if Congress had intended the Commission to require a mechanism for “activating” caption display settings that is reasonably comparable to a button, key, or icon, it would have said so in the CVAA.

Moreover, Sections 303(aa)(3) and 303(bb)(2) only require a means that is “reasonably comparable to a button, key, or icon designated for *activating*” the features Congress specifically identified in those provisions — that is, turning them off or on — not for adjusting the caption display settings as contemplated in the *FNPRM*.²⁵ The Commission should not unilaterally broaden this requirement. A mechanism “reasonably comparable to a button, key or icon” is not appropriate for settings with multiple options, such as user display selections for closed captioning. Adjusting settings such as font, color, or size of captions is not an “activation” within the ordinary meaning of that term. Unlike activation activities that have binary settings (on/off) that readily can be managed using a mechanism reasonably comparable to a dedicated “button, key, or icon,” settings related to, for example, font, color, and size, have multiple options that are not so readily managed.

²² See *FNPRM*, 28 FCC Rcd at 17415, ¶ 140.

²³ 47 U.S.C. § 303(aa)(3), (bb)(2).

²⁴ See *FNPRM*, 28 FCC Rcd at 17416, ¶ 142.

²⁵ 47 U.S.C. § 303(aa)(3), (bb)(2).

CEA believes that the Commission should not adopt any technical mandates for user display settings for closed captioning related to IP-delivered video.²⁶ Outside the television context, user display settings for closed captioning are a recent requirement, which apply only to devices manufactured on or after January 1, 2014.²⁷ CEA members have worked hard to meet that deadline. The *FNPRM* mentions “ongoing problems” with locating and controlling closed caption display settings.²⁸ However, at the time of the *FNPRM*’s release, apparatus covered by Section 203 of the CVAA were not required to comply with the technical standards for closed captioning display adopted pursuant to that statutory provision.²⁹ There is no evidence that the marketplace for IP-delivered video will suffer from these concerns as compliant devices enter the marketplace after January 1, 2014.

V. THE COMMISSION SHOULD NOT READ INTO SECTION 203 OF THE CVAA THE “REASONABLY COMPARABLE TO A BUTTON, KEY OR ICON” LANGUAGE OF SECTIONS 204 AND 205

The Commission should not mandate the means for accessing the secondary audio stream for emergency information on apparatus covered by Section 203 of the CVAA.³⁰ Doing so would impermissibly read a user control mandate into Section 203 and would be inconsistent with its plain meaning, which permits covered entities to implement it flexibly.

Section 203 does not require covered apparatus to provide access to audible emergency information through a mechanism that is “reasonably comparable to a button, key or icon.” Instead, Section 203 provides that covered apparatus must “have the capability to ... make

²⁶ See *FNPRM*, 28 FCC Rcd at 17416-17, ¶ 143.

²⁷ See 47 C.F.R. § 79.103(a) note 2.

²⁸ See *FNPRM*, 28 FCC Rcd at 17416, ¶ 142.

²⁹ See *id.* at n.549.

³⁰ See *FNPRM*, 28 FCC Rcd at 17417-18, ¶¶ 145-46.

available emergency information ... in a manner that is accessible to individuals who are blind or visually impaired.”³¹ As such, Section 203 provides manufacturers with flexibility in making sure that emergency information is accessible to people who are blind or have visual impairments.³²

In contrast, the “reasonably comparable to a button, key, or icon” requirements for user control activation mechanisms are expressly limited to Sections 204 and 205.³³ If Congress had meant for such a specific requirement to apply to emergency information, it surely would have said so in Section 203. Because Congress chose not to do so, the Commission has no authority to impose such a requirement in the Section 203 context.³⁴

VI. A WEBSITE CONSUMER NOTIFICATION REQUIREMENT FOR NAVIGATION DEVICE MANUFACTURERS COULD BE REASONABLE, BUT THE COMMISSION SHOULD NOT IMPOSE A LABELING REQUIREMENT

CEA agrees that, as proposed in the *FNPRM*, manufacturers that are subject to Section 205 should display on their official websites information about the availability of audibly accessible navigation devices and accessibility solutions, such as through a link on their home pages.³⁵ The display of accessibility information on covered entities’ official websites will

³¹ See CVAA § 203 (codified at 47 U.S.C. § 303(u)(1)(C)).

³² See *id.* § 203(e) (providing for alternative means of compliance).

³³ Cf. *id.* §§ 204(a), 205(a), with *id.* § 203.

³⁴ See discussion of *expressio unius* principle in footnote 16, *supra*. The *FNPRM* notes that individuals who are blind or visually impaired currently are unable to get to the secondary audio stream to access video described programming. See *FNPRM*, 28 FCC Rcd at 17418, ¶ 145. However, the Commission’s rules currently do not require apparatus covered by Section 203 to provide access to the secondary audio stream. See 47 C.F.R. §§ 79.105-.106. Moreover, Congress specifically did *not* require Section 203 devices to include a mechanism reasonably comparable to a button, key or icon for accessing video description – the other service provided through the secondary audio stream – providing yet further evidence that such a requirement would not be appropriate in this context.

³⁵ See *FNPRM*, 28 FCC Rcd at 17419, ¶ 150.

adequately publicize the availability of accessible navigation devices and solutions, and no additional notification requirements are needed.

However, the Commission should not impose a labeling requirement on manufacturers or retailers pursuant to either Section 204 or Section 205 of the CVAA. A labeling requirement is unnecessary to ensure that consumers will be able to identify devices with the required accessibility features, and potentially would be counterproductive. Manufacturers and retailers have no incentive to mislead consumers about the relative capabilities of various video products, but do possess powerful incentives to inform consumers accurately about such products, so as to ensure customer satisfaction, return sales, and sales of complementary products.

Regarding entities subject to Section 204,³⁶ labeling and notification requirements are unnecessary because Section 204 applies to all covered digital apparatus. Thus, there is no reason to impose notification or labeling requirements to help consumers understand which apparatus contain accessibility features and which do not. In fact, there is no need to impose notification requirements on manufacturers of digital apparatus if the Commission adopts the definition of “usable” suggested above.³⁷ Doing so would ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for additional notification requirements. The Commission should forgo any new rules.

Regarding entities subject to Section 205, the content of a rule requiring that Section 205 audibly accessible navigation devices be so labeled would not be straightforward. The exact phrasing of the advisory and the rule’s application to various products could be a matter of labyrinthine debate. Injecting more uncertainties into the requirements for navigation devices will only serve to hamper the deployment of innovative accessibility solutions for these products

³⁶ *See id.* at 17420, ¶ 152.

³⁷ *See supra* Section I.

and thus the objectives of Section 205 itself. Instead of mandating how notification is provided at the point of sale, the Commission should permit manufacturers to work with retailers on providing adequate information at the point of sale.

VII. CONCLUSION

CEA requests the Commission to decide the issues raised in the *FNPRM* consistent with the recommendations expressed in these comments.

Respectfully submitted,

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