

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

**REPLY COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Electronics Association (“CEA”) respectfully responds to comments filed on the Further Notice of Proposed Rulemaking (“*FNPRM*”)¹ in the above-captioned proceedings. CEA appreciates the Commission’s efforts to implement Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“*CVAA*”) in a manner that is consistent with the statutory text.² Consistent with CEA’s comments, the record in these proceedings demonstrates that the Commission must be guided by the following principles in resolving the issues raised in the *FNPRM*:

- The plain language of Sections 303(aa) and 303(bb) of the Communications Act of 1934 (the “Act”), added by Sections 204 and 205 of the *CVAA*, best indicates statutory intent.
- As expressly recognized in the *CVAA*, the Commission’s rules must provide flexibility to industry in complying with Sections 303(aa) and 303(bb) of the Act, to ensure both improved accessibility and continuing innovation in the development of new products.

¹ 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*.” In these reply comments, unless otherwise indicated, all comments are short-cited and refer to pleadings filed on or about February 18, 2014, in MB Docket Nos. 12-108 and 12-107.

² Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“*CVAA*”); see also An Act to make technical corrections in the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act, Pub. L. No. 111-265, 124 Stat. 2795 (2010).

I. THE CVAA DOES NOT AUTHORIZE ANY RESTRICTION ON THE MEANS FOR ACCESSING CLOSED CAPTION DISPLAY SETTINGS

The record demonstrates that the plain language of Sections 303(aa)(3) and 303(bb)(2) limits the requirement for a mechanism “reasonably comparable to button, key, or icon” to activating the basic accessibility features specified in those sections.³ Contrary to the Advocacy Groups and Wireless RERC, imposing a mandate on closed caption display settings or additional features other than those specified in Sections 303(aa)(3) and 303(bb)(2) would ignore the plain language of those provisions.⁴

As CEA has stated previously, and others agree,⁵ 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 that covered digital apparatus must provide access to via a mechanism “reasonably comparable to a button, key, or icon.”⁶ Similarly, Section 303(bb)(2) identifies built-in closed captioning capability as the only feature that navigation devices must provide access to via a mechanism “reasonably comparable to a button, key, or icon.”⁷ Neither provision even mentions closed caption display settings or mandates the means for accessing such features on covered devices, let alone requires covered

³ See CEA Comments at 6-8; DISH and EchoStar Comments at 4-5; NCTA Comments at 5-6; Verizon Comments at 6-7; TIA Comments at 2-5.

⁴ See NAD et al. at 4-11 (“Advocacy Groups”); Wireless RERC Reply Comments, MB Docket Nos. 12-108 & 12-107, at 5-8 (filed Feb. 25, 2014) (“Wireless RERC Reply Comments”).

⁵ CEA Comments at 6; Verizon Comments at 6-7; DISH and EchoStar Comments at 4-5; NCTA Comments at 5-6.

⁶ 47 U.S.C. § 303(aa)(3).

⁷ *Id.* § 303(bb)(2).

devices to provide access to all accessibility features in the first level of a menu or via a button, key, icon, or any other particular means.⁸

The statutory construction guideline against surplusage does not dictate that the Commission extend the user control activation mechanism requirements broadly to user display settings for closed captioning, as the Advocacy Groups suggest.⁹ As the Commission recognizes in the *FNPRM*, it is possible to give effect to the phrase “or accessibility features” without unilaterally broadening the scope of Sections 303(aa)(3) and 303(bb)(2).¹⁰

Moreover, the Advocacy Groups’ overly broad reading of Sections 303(aa)(3) and 303(bb)(2) would not give effect to the term “activating,” as it is used in both provisions. Sections 303(aa)(3) and 303(bb)(2) require user control mechanisms that are “reasonably comparable to a button, key, or icon designated for *activating*”¹¹ the features Congress specifically identified in those provisions — that is, turning them off or on. Users do not “activate” multi-parameter closed caption display settings such as font, color, or size of captions – rather, they select from among the parameters associated with the specified setting.¹² Assertions to the contrary are simply inaccurate, as the Advocacy Groups themselves reveal in their comments about “using,”¹³ “alter[ing],”¹⁴ “customiz[ing],”¹⁵ and “adjust[ing]”¹⁶ closed caption display settings, rather than “activating” these settings.

⁸ See Wireless RERC Reply Comments at 7; Advocacy Groups Comments at 4-11.

⁹ See *id.* at 4-5.

¹⁰ See *FNPRM*, 28 FCC Rcd at 17416, ¶ 142.

¹¹ 47 U.S.C. §§ 303(aa)(3), (bb)(2) (emphasis added).

¹² See TIA Comments at 5; DISH and EchoStar Comments at 4.

¹³ Advocacy Groups Comments at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8.

In addition, a mechanism “reasonably comparable” to a dedicated “button, key, or icon” is not appropriate for closed caption display settings which, unlike activation activities that have binary settings (on/off), contain multiple options that are not so readily managed using such a mechanism.¹⁷ The reality is that adjusting closed caption display settings does not fit neatly within the paradigm of button, key, or icon, which suggests that the statutory text was not meant to cover these settings.

There is no indication that Congress intended for the Commission to broaden the scope of Sections 303(aa)(3) and 303(bb)(2) beyond the features that Congress specified in those sections.¹⁸ The plain language of these provisions is “the clearest indication of Congressional intent,”¹⁹ and the plain language merely requires covered devices to provide access to closed captioning (and video description for digital apparatus) through mechanisms that are “reasonably comparable to a button, key, or icon.”²⁰ The Commission has already ensured ready access to these features by persons with disabilities, as intended by Congress, and no further action is needed.

The Advocacy Groups argue that Congress “surely meant” the term “accessibility features” to refer to the ability to adjust closed caption display settings,²¹ but this conjecture is baseless. The Advocacy Groups point to no language in the statute that supports their claim. 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 stated so in the

¹⁶ *Id.* at 9.

¹⁷ *See* TIA Comments at 4-5.

¹⁸ *See* Advocacy Groups Comments at 5-7.

¹⁹ *National Public Radio v. FCC*, 254 F.3d 226, 230 (D.C. Cir. 2001).

²⁰ *See* Verizon Comments at 7.

²¹ *See* Advocacy Groups Comments at 6.

CVAA, especially if Congress was aware of the caption display standards that the Commission previously adopted.

The Advocacy Groups further argue that Section 203 authorizes the Commission to specify how users might interact with closed caption display settings,²² but Section 203 (unlike Sections 204 and 205) simply does not require covered apparatus to provide access to any feature through a mechanism that is “reasonably comparable to a button, key, or icon.” Section 203 addresses a set of issues distinct from those addressed in Sections 204 and 205 of the CVAA. Section 203 relates to the technical capabilities of covered apparatus, while Sections 204 and 205 relate to user interfaces on digital apparatus and video programming guides and menus on navigation devices. Because Congress included all of the CVAA’s accessibility requirements for user interfaces in Sections 204 and 205, Section 203 provides no basis for the Commission to impose requirements on user interfaces and video programming guides and menus.

II. SECTION 203 OF THE CVAA IMPOSES NO CONSTRAINT ON THE MEANS FOR ACCESSING AURAL EMERGENCY INFORMATION

The record shows that Section 203 of the CVAA does not authorize a “reasonably comparable to a button, key, or icon” requirement for accessing the secondary audio stream for emergency information or any other accessibility features.²³ Consistent with CEA’s comments, other commenters accurately point out that Section 203 does not require or at all refer to a mechanism reasonably comparable to a button, key, or icon for accessing any of these features.²⁴ Section 203 merely requires covered apparatus to have the capability to display closed-captioned video programming and make available video description and emergency information in a

²² *See id.* at 7.

²³ *See* DISH and EchoStar Comments at 5-7; NCTA Comments at 6-7; CEA Comments at 8-9.

²⁴ *See* DISH and EchoStar Comments at 6; NCTA Comments at 6.

manner that is accessible to the blind and visually impaired. The “reasonably comparable to a button, key, or icon” requirements for user control activation mechanisms are expressly limited to the context of Sections 204 and 205. As others indicate, if Congress had meant for such a requirement to apply to emergency information, it would have stated so in Section 203.²⁵

Nonetheless, blind and visually impaired individuals still will have access to audible emergency information on the secondary audio stream despite the fact that Section 203 does not authorize a mandate on the means for accessing such information. Pursuant to the rules the Commission adopted in the *Order*, covered digital apparatus with built-in video description capability must ensure that video description can be activated through a mechanism that is reasonably comparable to a button, key, or icon.²⁶ Moreover, as NCTA points out, blind and visually impaired cable customers will have access to on-screen material on navigation devices, including audible information about where to locate video description on the secondary audio stream.²⁷ Because aural emergency information will be passed through on the same stream, no additional dedicated “mechanism” will be needed for blind and visually impaired customers to be able to readily locate it.

III. BECAUSE MANUFACTURERS CAN INFORM CONSUMERS ADEQUATELY ABOUT THE AVAILABILITY OF ACCESSIBLE NAVIGATION DEVICES VIA THEIR OFFICIAL WEBSITES, NO OTHER NOTIFICATION REQUIREMENTS ARE NEEDED

The Commission should not impose any consumer notification or labeling requirements on equipment manufacturers beyond a requirement that navigation device manufacturers place on their official websites information about the availability of audibly accessible navigation

²⁵ See DISH and EchoStar Comments at 6; NCTA Comments at 6 & n.22.

²⁶ 47 C.F.R. § 79.109(a)(2).

²⁷ See NCTA Comments at 7.

devices and accessibility solutions. The display of accessibility information on the official websites of navigation device manufacturers will adequately publicize the availability of audibly accessible navigation devices and solutions.²⁸ No notification requirements are necessary for covered digital apparatus.²⁹ Because Section 204 applies to all of these devices, relying on the existing definition of “usable” in the Section 204 context will ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for specific, and burdensome, labeling or other notification requirements.³⁰

There is no need for the Commission to impose additional requirements concerning product packaging or customer support services for digital apparatus or navigation devices. Nor is there a need for detailed requirements regarding the information that manufacturers provide on their websites to publicize the availability of accessible devices and solutions.³¹

Mandatory labeling is unnecessary to ensure that consumers will be able to identify digital apparatus and navigation devices with the required accessibility features, and potentially would be counterproductive. CEA strongly opposes the imposition of mandatory government labels based on speculation without evidence of existing problems. There is no demonstrated problem, nor is one likely to arise. CE manufacturers have every incentive to ensure that consumers are well informed about the capabilities of the products they purchase. Misinformed consumers can easily lead to disappointed purchasers and product returns. To suggest that consumers and salespeople cannot communicate what the consumer wants, and that a federally-

²⁸ See CEA Comments at 9-10; DISH and EchoStar Comments at 8.

²⁹ See Advocacy Groups Comments at 11-14.

³⁰ See CEA Comments at 10.

³¹ See Advocacy Groups Comments at 12-14.

dictated label will overcome this communication gap, does not comport with how the retail marketplace operates.

In addition, the content of a rule requiring that accessible digital apparatus and navigation devices be so labeled would be extremely difficult to implement. The exact phrasing of the advisory and the rule's application to various products could be a matter of wasteful and unproductive debate, thus creating more uncertainties that will impede the deployment of innovative products. In particular, labeling poses unique challenges for multi-purpose devices, which may have several apps with different closed captioning capabilities. For example, it would be especially difficult to explain all of the captioning instructions for various video apps on the outside of the packaging of a small tablet.

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. CEA believes it is more productive for companies and industries to provide this information on a dynamic basis, according to marketplace feedback, than via static regulations. Indeed, the combination of dynamic efforts and fixed labels could serve to confuse, rather than enlighten, consumers.

IV. ADDITIONAL INFORMATION, DOCUMENTATION, AND TRAINING REQUIREMENTS ARE UNNECESSARY

The Commission should not impose additional information, documentation, and training requirements on manufacturers of digital apparatus and navigation devices. Given the other obligations on covered entities, these requirements would be redundant.

There is no need to impose stand-alone information, documentation, and training requirements on manufacturers of digital apparatus, because applying the existing definition of “usable” will satisfy the objectives of Section 303(aa) without additional requirements. The

definition of “usable” in Section 6.3(l) of the Commission’s rules already covers information and documentation requirements, and commenters agree that the Commission should rely on this well-established definition.³² CEA members are well aware that, to meet the existing standard, adequate training must be provided to customers who need it and to employees.

Stand-alone information, documentation, and training requirements also are not needed to accomplish the objectives of Section 303(bb). As other commenters note, 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 in contexts involving broader accessibility requirements.³³ Further, stand-alone information, documentation, and training requirements are not necessary to implement Section 303(bb)’s requirement that covered entities provide 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.³⁴

V. OTHER ISSUES

Consultation Requirements. The Commission should not impose requirements on covered entities with regard to their efforts to consult with individuals with disabilities.³⁵ Unlike in other CVAA contexts where the Commission has imposed such requirements, Sections 204 and 205 do not refer to covered entities’ efforts to consult with individuals with disabilities.³⁶

³² See CEA Comments at 2-4; DISH and EchoStar Comments at 2-4; Verizon Comments at 2; Wireless RERC Comments at 4.

³³ See NCTA Comments at 7; Verizon Comments at 3.

³⁴ See NCTA comments at 7-8; DISH and EchoStar Comments at 8.

³⁵ See *FNPRM*, 28 FCC Rcd at 17417, ¶143; Advocacy Groups at 11.

³⁶ Compare CVAA § 104 (codified at 47 U.S.C. § 618), with CVAA §§ 204-05 (codified at 47 U.S.C. § 303(aa)-(bb)).

Moreover, industry already has incentives to work with the disabilities community in its efforts to comply with the Commission's accessibility rules.

Expansion of Sections 204 and 205. The Advocacy Groups' proposal to require that closed captioning features are accessible to those who are deaf or hard of hearing and have additional disabilities such as mobility is outside the scope of Sections 204 and 205.³⁷ Sections 204 and 205 merely require user control activation mechanisms that are "reasonably comparable to a button, key or icon."³⁸ These provisions do not require mechanisms that are accessible to individuals with a specific type of disability. Moreover, Sections 204 and 205 are focused on the needs of individuals who are blind or visually impaired.

VI. CONCLUSION

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

Respectfully submitted,

CONSUMER ELECTRONICS
ASSOCIATION

By: /s/ Julie M. Kearney

Julie M. Kearney
Vice President, Regulatory Affairs
Alexander B. Reynolds
Senior Manager & Regulatory Counsel
Consumer Electronics Association
1919 S. Eads Street
Arlington, VA 22202
(703) 907-7644

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³⁷ See Advocacy Groups Comments at 11.

³⁸ 47 U.S.C. §§ 303(aa)(3), (bb)(2).