

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

**REPLY COMMENTS**



Matthew M. Polka  
President and Chief Executive Officer  
American Cable Association  
One Parkway Center  
Suite 212  
Pittsburgh, Pennsylvania 15220  
(412) 922-8300

Barbara S. Esbin  
Elvis Stumbergs  
Cinnamon Mueller  
1333 New Hampshire Ave, N.W.  
2<sup>nd</sup> Floor  
Washington, DC 20036  
(202) 872-6811

Ross J. Lieberman  
Vice President of Government Affairs  
American Cable Association  
2415 39<sup>th</sup> Place, NW  
Washington, DC 20007  
(202) 494-5661

Attorneys for the American Cable Association

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**REPLY COMMENTS OF  
THE AMERICAN CABLE ASSOCIATION**

The American Cable Association (“ACA”) submits these reply comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding and related filed comments.<sup>1</sup> In the Report and Order, the Commission adopted rules implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), requiring cable operators to provide for increased accessibility of navigation devices.<sup>2</sup> Recognizing that smaller operators generally face the challenge of strained resources, lack of market power to independently drive technological solutions, and that they must rely on research and development efforts of larger operators prior to deploying new equipment and services, the Commission granted certain smaller and medium-sized multichannel video programming distributors (“MVPDs”) an additional two years to

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<sup>1</sup> See *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 & Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (“Report & Order” and “Further Notice” or “FNPRM”).

<sup>2</sup> See *Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA”).

comply with the requirements of Section 205 of the CVAA.<sup>3</sup> ACA members greatly appreciated the Commission's relief.

ACA supports the Commission's continuing work to implement the CVAA through examination of the issues raised in the Further Notice. ACA comments in this proceeding reflect its concern about the impact of additional burdens on small and medium-sized operators—particularly those that may be unnecessary, premature, or unauthorized, and urges the Commission to take these issues into account when considering the proposals in the Further Notice, as it did regarding other topics addressed in the Report and Order. ACA recognizes the importance of enabling individuals who are blind or visually impaired to more easily access video programming on a range of video devices, and enabling consumers who are deaf or hard of hearing to more easily activate closed captioning on video devices. However, we echo the concerns submitted by numerous other commenters about many of the proposals advanced in the Further Notice. Specifically, imposing additional information, documentation and training requirements on MVPDs does not comport with authority granted under Section 205 of the CVAA; additional notifications regarding accessible navigation devices are unnecessary given the notification requirements already in place; requiring caption display settings to be subject to the same accessibility standards as caption activation is not authorized by the CVAA; and there is no authority for mandating that operators create additional programming guide content. Each of these proposals would also impose unwarranted burdens on smaller and medium-sized MVPDs whose limited resources the Commission has previously recognized, and should acknowledge in this instance as well if the Commission should decide to proceed in implementing any of these proposals.

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<sup>3</sup> *Id.* at ¶ 115.

**I. ADDITIONAL INFORMATION, DOCUMENTATION AND TRAINING REQUIREMENTS ARE NEITHER AUTHORIZED BY SECTION 205 NOR NECESSARY**

The FNPRM sought comment on whether the Commission should impose information, documentation, and training (“IDT”) requirements on MVPDs under Section 205 concerning accessible user guides similar to those that are required from providers of Advanced Communications Services (“ACS”) and mobile Internet browsers under Sections 716 and 718 of the CVAA, respectively.<sup>4</sup> The Consumer Electronics Association, DISH and EchoStar, NCTA, and Verizon all oppose such requirements, generally citing the absence of statutory authority for such requirements and that they are unnecessary.<sup>5</sup> ACA agrees with these commenters that the rules are unnecessary and also requests that the Commission acknowledge that such requirements may place particular burdens on smaller cable operators. Should the Commission nevertheless decide to go forward with these requirements, we request that small and medium-sized operators receive an extended compliance deadline.

As a threshold matter, and as several commenters have pointed out, Section 205 does not contain language suggesting that the same requirements which apply to ACS, and Internet browsers should apply to MVPDs under Section 205.<sup>6</sup> The FNPRM states that the Commission has “adopted information, documentation, and training requirements when implementing Sections 716 and 718 of the Act,” based on these sections’ guidance that covered products be “accessible to and usable by” individuals with disabilities.<sup>7</sup> Section 205, in contrast, does not contain the language requiring products to be “accessible to and usable by” individuals with disabilities. Instead, Section 205 directs the Commission on the specific types of accessibility

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<sup>4</sup> FNPRM, ¶ 139.

<sup>5</sup> See Comments of the Consumer Electronics Association at 5 (“CEA”); Comments of EchoStar Technologies L.L.C. and DISH Network L.L.C. at 3-4 (“DISH”); Comments of the National Cable and Telecommunications Association at 7-8 (“NCTA”); Comments of Verizon and Verizon Wireless at 3 (“Verizon”).

<sup>6</sup> See CEA at 5; DISH at 3; NCTA at 7; Verizon at 3.

<sup>7</sup> FNPRM, ¶ 139.

regulations that it must adopt.<sup>8</sup> This distinction between the statutory provisions prohibits the Commission from reading in IDT requirements into Section 205 on the sole basis that it has applied them to providers under other provisions of the CVAA; doing so would inconsistently interpret the CVAA, contrary to commonly accepted rules of statutory construction.<sup>9</sup> Likewise, the general guidance under Section 205 that the Commission must “prescribe such regulations as are necessary” also cannot be used to read in IDT requirements that the Commission added for Section 716 and 718 providers because doing so would similarly lead to an inconsistent interpretation of the CVAA.<sup>10</sup>

Additional IDT requirements would also disproportionately burden smaller cable operators who would have to produce the required accessibility support materials and training without the benefits of scale to help them to spread the costs of such initiatives over a large user base. If the Commission nevertheless decides to go forward with IDT requirements, smaller and medium-sized operators would benefit from the Commission acknowledging that they would likely lack the legal, technical, or financial ability to incorporate the IDT requirements.

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<sup>8</sup> See CVAA, § 205(a) (requiring audibly accessible on-screen text menus and guides, and specific facilitated access to closed captioning capability).

<sup>9</sup> See *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, File No. EB-02-IH-0768, etc., Order on Review, 22 FCC Rcd 8943 ¶ 8 n.36 (2007) (“statutory provisions should be interpreted so as to be consistent with each other”), citing *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990).

<sup>10</sup> See FNPRM, ¶ 139. Section 716 directs the Commission to “promulgate such regulations as are necessary to implement this section” and requires that covered products be “accessible to and usable by” individuals with disabilities. CVAA, §§ 716(a)(1), (e)(1). Interpreting the former phrase in Section 205 to justify IDT regulations would render the latter phrase in Section 716 superfluous – a result contrary to statutory rules of construction. Further, Section 718 cannot be used to justify the IDT requirements either given that it contains no language regarding the Commission’s authority to promulgate regulations, and the Commission has found Section 718 to have overlapping requirements with Section 716; the Commission must interpret the parts of the statute consistently. 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*, CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198, Second Report and Order, 28 FCC Rcd 5957 ¶¶ 13-14 (2013).

Accordingly, the Commission should provide them with an extended compliance deadline as it did for other Section 205 requirements.<sup>11</sup>

## **II. ADDITIONAL REQUIREMENTS REGARDING NOTIFICATION OF ACCESSIBLE DEVICES ARE UNNECESSARY**

The FNPRM sought comment about whether the Commission should impose additional notification requirements about the availability of audibly accessible devices and accessibility solutions on MVPDs and, if so, what should those requirements be.<sup>12</sup> The Commission noted that it already requires MVPDs to provide information about equipment options in response to consumer inquiries and to inform their customers generally about equipment availability.<sup>13</sup> DISH and EchoStar, NCTA and Verizon all explain how imposing these requirements would be unnecessary and ACA agrees. Moreover, we note that these mandates would also disproportionately burden smaller operators.

The Consumer Groups have demonstrated no basis for their recommendations regarding mandated customer service training, creation of a central website, or product packaging notices.<sup>14</sup> In addition, the granular nature of these mandates deprive MVPDs of the flexibility to determine how best to serve the accessibility needs of their customers. Indeed, as several commenters have pointed out, existing notification requirements will likely be more than sufficient to inform consumers.<sup>15</sup> Adding on detailed, prescriptive requirements would also not

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<sup>11</sup> See Report & Order, ¶ 114.

<sup>12</sup> FNPRM, ¶ 148.

<sup>13</sup> *Id.*

<sup>14</sup> See Comments of Comments of Consumer Groups and Telecom-RERC at 12-13 (“Consumer Groups”) (recommending customer service training mandates, the creation of a central website which includes “all digital apparatus and navigation devices,” and mandated inclusion of accessibility notices should on product packaging).

<sup>15</sup> See DISH at 8 (“The FCC has already imposed notification requirements on MVPDs that are sufficient to inform consumers.”); NCTA at 8 (additional notice requirements are unnecessary since “the rules already contemplate MVPD-provided notice of the availability of navigation devices with audible accessibility.”); Verizon at 4-5 (“it is sheer speculation at this time whether these additional contexts would be necessary or useful after these products are deployed in 2017 and beyond.

only be unnecessary but prove particularly challenging for smaller operators to implement and limit the resources they can devote to provide accessibility solutions better tailored to their systems and customers, as well as to comply with other accessibility obligations.<sup>16</sup>

Consistent with Verizon's comments, ACA recommends that the Commission allow implementation efforts of accessible navigation devices to proceed under the current rules and then re-assess at a period following the last compliance deadline whether additional notification requirements are warranted.<sup>17</sup> Implementation of current accessibility mandates will already prove challenging for smaller providers and the Commission should avoid compounding this difficulty by tacking on even more requirements.

### **III. THE CVAA DOES NOT AUTHORIZE AN ACCESSIBILITY REQUIREMENT FOR CLOSED CAPTION DISPLAY SETTINGS**

The FNPRM seeks comment on whether the FCC (i) has the authority to require, and (ii) whether it should require, that "covered entities" facilitate the ability of viewers to locate and control user display settings for closed captioning.<sup>18</sup> The FNPRM suggests that such facilitation would be accomplished by a "mechanism that is reasonably comparable to a button, key or icon designated for accessible caption display settings."<sup>19</sup> The Consumer Groups advocating for this mandate again stretch the CVAA's meaning to achieve goals beyond those envisioned by Congress. As explained by several commenters, the Commission should decline adopting this suggestion.

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<sup>16</sup> See DISH at 8 ("Any additional notification requirements for MVPDs and equipment manufacturers may increase costs, which could negatively impact consumer access to next generation technology.")

<sup>17</sup> See Verizon at 6 (the Commission should do no more than "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.")

<sup>18</sup> FNPRM, ¶¶ 140-143.

<sup>19</sup> *Id.* at ¶¶ 142-143.

The Consumer Groups argue that the “explicit inclusion of the term ‘accessibility features’ in Sections 303(aa)(3) [Section 204] and 303(bb)(2) [Section 205] of the Act by Congress, which had prior knowledge of Commission efforts to provide viewers with the tools to control the appearance of closed captions, gives the Commission sufficient discretion to require the provision of a mechanism that is reasonably comparable to a button, key, or icon designated for accessing caption display settings.”<sup>20</sup> In particular, the Consumer Groups contend that Section 205 “directs the Commission to require ‘for navigation devices with built-in closed captioning, ... access to that capability through a mechanism ... reasonably comparable to a button, key, or icon designated for activating the closed captioning, *or accessibility features.*”<sup>21</sup> They argue that giving meaning to “accessibility features” permits the Commission to impose captioning display requirements.

As commenters have pointed out, the legal uncertainty surrounding imposition of this mandate counsels against its imposition.<sup>22</sup> Notably, Section 205 requires a mechanism only to *activate* closed captioning or accessibility features. Instead of imposing an additional requirement, this provision is more reasonably read to provide flexibility for the implementation of this requirement by allowing the mechanism that *activates* closed captioning to be exclusively devoted to captioning or more generally to “accessibility features.” It should not be read to permit the creation of an additional mandate. Further, mandating a feature that requires the *modification* of how closed captions are displayed is a step beyond merely activating them, which typically would refer to only turning the feature on or off.<sup>23</sup>

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<sup>20</sup> Consumer Groups at 4.

<sup>21</sup> *Id.* at 4 (emphasis in original).

<sup>22</sup> CEA at 7-8; DISH at 4-5; NCTA at 5-6; Comments of the Telecommunications Industry Association at 5 (“TIA”); Verizon at 7.

<sup>23</sup> See CEA at 7 (“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”; Sections 303(aa)(3) and 303(bb)(2) only require a means to turn on/off features, not adjust display settings as contemplated in the FNPRM); DISH at 4-5 (neither Section 204 nor 205 direct the Commission to impose

#### **IV. THE COMMISSION LACKS AUTHORITY TO MANDATE THE CREATION OF ADDITIONAL DETAILED PROGRAMMING GUIDE CONTENT UNDER SECTION 205**

The FNPRM sought comment on the costs and benefits, as well as the commission's authority, associated with a requirement to require MVPDs to ensure that video programming guides and menus that provide channel and program information include "high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options (captioning and video description)."<sup>24</sup>

The Alliance for Communications Democracy ("ACD")—this proposal's sole advocate, stretches Section 205 to read in some authority for the Commission to mandate such a requirement. ACD fails in this attempt. ACA agrees with DISH and EchoStar, NCTA and Verizon that neither Section 205 nor the Communications Act provide the Commission with authority to impose this mandate, and that even if it did, the substantial burdens on MVPDs of complying with this mandate would need to be seriously considered.

Contrary to ACD's contention, nothing in the CVAA or elsewhere suggests that Congress intended the Commission to regulate the content of programming guides.<sup>25</sup> The CVAA's direction to make programming guides and menus "accessible" through technological means does not mean that the Commission can mandate the creation of content (i.e., program summaries) that would be included in the programming guides. To date, the FCC has correctly

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additional accessibility requirements beyond activating closed captioning); TIA at 5 ("fine-tuning of closed captioning settings after they have already been turned on (e.g., altering font, color, size of captions, etc.) should not be considered an 'activation' function when using the conventional definition of the word").

<sup>24</sup> FNPRM, ¶ 144.

<sup>25</sup> See Comments of the Alliance for Communications Democracy at 4-5 ("ACD") (ACD reads Section 205's requirement that "on-screen menus and guides... [must be]... audio accessible" to give the Commission "authority to determine what constitutes an adequate on-screen guide.")

never regulated the content of MVPD programming guides and doing so would raise serious concerns.<sup>26</sup>

Further, commenters have made clear the burdens inherent in creating ultra-localized program guide content for their systems.<sup>27</sup> These technological challenges would be substantially amplified for smaller operators which do not have the spare resources to devote to the necessary system design adjustments required to accommodate inclusion of such content, and limited ability to convince their program guide vendors to accommodate such changes.<sup>28</sup> All of these reasons counsel against Commission action in response to this proposal.

## **V. CONCLUSION**

ACA supports the Commission's implementation of the CVAA and believes that navigation device accessibility is a laudable goal. As explained above, however, the Commission should constrain its implementation of the statute to the extent authorized by Congress and avoid acting on proposals that would prove more burdensome than beneficial given the lack of any demonstrable need for the requirements. Accordingly, the Commission must not impose additional information, documentation or training requirements; require additional notification requirements; read in inflated accessibility proposals for closed captioning display mechanisms; or mandate the creation of additional detailed programming guide content.

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<sup>26</sup> See NCTA at 3 (“Section 205 is not a license for the Commission to impose new burdens on cable operator guide data simply because data must be audibly accessible”; there is no authority to provide program guides in the Communications Act either); Verizon at 9 (noting First Amendment concerns).

<sup>27</sup> See NCTA at 4 (the proposal would require “significant – and costly – change in the manner in which program guide data is made available today.”); Verizon at 10-11 (there exist substantial technical difficulties in adding programming descriptions specific to a PEG channel's LFA, including modification of an MVPD's network design.)

<sup>28</sup> See NCTA at 4 (“[c]able operators typically work with outside program guide vendors to create the program information contained within the guide”).

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**

By: 

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Matthew M. Polka  
President and CEO  
American Cable Association  
One Parkway Center  
Suite 212  
Pittsburgh, Pennsylvania 15220

(412) 922-8300

Ross J. Lieberman  
Vice President of Government Affairs  
American Cable Association  
2415 39<sup>th</sup> Place, NW  
Washington, DC 20007

(202) 494-5661

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Barbara S. Esbin  
Elvis Stumbergs  
Cinnamon Mueller  
1333 New Hampshire Ave,  
2<sup>nd</sup> Floor  
Washington, DC 20036

(202) 872-6811

Attorneys for American Cable Association