

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
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Accessibility of User Interfaces, and Video Programming Guides and Menus)	MB Docket No. 12-108
)	
Accessibility Emergency Information, and Apparatus Requirements for Emergency Information and Video Distribution: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010)	MB Docket No. 12-107
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**OPPOSITION TO PETITION FOR RECONSIDERATION OF THE TELECOMMUNICATIONS INDUSTRY
ASSOCIATION**

I. INTRODUCTION AND STATEMENT OF INTEREST

The Telecommunications Industry Association (“TIA”) hereby submits its opposition to the National Association of the Deaf (“NAD”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Association of Late-Deafened Adults, Inc. (“ALDA”), Hearing Loss Association of America (“HLAA”), California Coalition of Agencies Servicing the Deaf and Hard of Hearing (“CCASDHH”), Cerebral Palsy and Deaf Organization (“CPADO”) and the Technology Access Program at Gallaudet University (“TAP”) (collectively referred to the “Consumer Groups and TAPS”) Petition

for Reconsideration¹ questioning the analysis of the Federal Communications Commission’s (“FCC” or the “Commission”) Report and Order regarding the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) user interface apparatus requirement. TIA agrees with the Commission’s analysis and conclusion that, consistent with the CVAA’s “reasonably comparable”² and “maximum flexibility” provisions,³ covered entities should not be required to use a specific mechanism to satisfy the requirements of Sections 303 (aa)(3) and 303(bb)(2).

II. DISCUSSION

A. TIA OPPOSES THE CONSUMER GROUPS AND TAPS’ PETITION FOR RECONSIDERATION

TIA and our members have a long-held commitment to enhancing the accessibility of information and communications technology (“ICT”) products and services. It is crucial for the Commission to allow for flexibility and technology neutrality in the implementation of the CVAA, so as not to “lock in” a limited set of solutions deemed adequate for today when new

¹ Petition for Reconsideration for the National Association for the Deaf; Telecommunications for the Deaf and Hard of Hearing, Inc.; Deaf and Hard of Hearing Consumer Advocacy Network; Association of Late-Deafened Adults, Inc.; Hearing Loss Association of America; California Coalition of Agencies Serving the Deaf and Hard of Hearing; Cerebral Palsy and Deaf Organization; and Technology Access Program Gallaudet University, MB Docket No. 12-108; MB Docket No. 12-107 (filed Jan. 20, 2014) (“Petition”).

² 47 U.S.C. § 303(aa)(3).

³ *See id.* at § 303(bb)(2).

innovations are constantly being rolled out, some of which cannot currently be predicted. No industry illustrates the need for flexibility and technology neutrality more than the dynamic ICT industry.

1. TIA AGREES WITH THE COMMISSION’S ANALYSIS AND CONCLUSION THAT COVERED ENTITIES SHOULD NOT BE REQUIRED TO USE A SPECIFIC MECHANISM TO SATISFY THE REQUIREMENTS OF THE CVAA

In Sections 303(aa)(3) and 303(bb)(2) of the Communications Act (the “Act”), covered ICTs must provide certain accessibility features through a mechanism *reasonably comparable* to a button, key, or icon.⁴ TIA agrees with the Commission’s interpretation that the phrase “reasonably comparable”⁵ in the statute does not require an actual button, key, or icon. There is no evidence suggesting Congress intended to make such a measure mandatory, and the statute leaves that determination to the Commission. As the Commission and numerous commentators have explained, if Congress intended for the only permissible activation mechanism to be a button, or a key, or an icon, it would have expressly stated so in the CVAA.⁶

⁴ *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus (MB Dkt No. 12-108), In the Matter of Accessible Emergency, and Apparatus Requirements of Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Dkt No. 12-107)*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-138, released Oct. 31, 2013, ¶ 79 (“Order”).

⁵ See § 303(aa)(3).

⁶ See Order at ¶ 80 (writing “Commenters also emphasized that Section 204 permits “alternate means of compliance,” while Section 205 gives entities that provide navigation devices subject to that section “maximum flexibility” in the section of means for compliance with section 303(bb)(2) of the [Act],” and that requiring a single step contravenes the flexibility that Congress intended for covered entities.”).

Furthermore, TIA believes the Commission correctly understands the meaning of “maximum flexibility” in section 303(bb)(2) of the Act as Congress allowing the FCC to consider “the simplicity and ease of use of the mechanisms” when promulgating rules.⁷ Congress’s willingness to provide “maximum flexibility in the selection of means for compliance” was appropriately interpreted by the Commission to allow for innovative features to provide accessibility functions, including voice commands and gestures.⁸ TIA appreciates the Consumer Groups and TAPS’s concerns, but cannot agree that “[the] leap from tactile controls to voice and gesture controls lacks any justification or support under the CVAA, and there is no evidence that Congress intended to allow voice and gesture controls to satisfy these accessibility obligations.”⁹ The Commission included in its Report and Order citation to authority and analysis to justify its decision in this matter, noting that Congress has expressly given discretionary power in determining what, according to the Commission, qualifies as compliant under the statute. In this case the Commission has deemed such measures compliant under its rules.¹⁰

⁷ See *id.* at ¶ 81.

⁸ See *id.* (stating “[the Commission] believ[ed] that compliant mechanisms include, but are not limited to, the following: a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.”).

⁹ See Petition at p. 9.

¹⁰ See Pub. L. 111-260, 124 Stat. 2774 § 204(b) (Oct. 8, 2010) (stating “Within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), *the Commission* shall prescribe such regulations as are necessary to implement the amendments made by subsection (a) (emphasis added).”).

2. BY ALLOWING FLEXIBILITY IN ACCESSIBILITY SOLUTIONS, THE COMMISSION WILL MAKE EASIER THE ACTIVATION OF CLOSED CAPTIONING CONTROLS FOR MILLIONS OF CONSUMERS WITH DISABILITIES

The Petition states that individuals “unable to use voice controlled technology...will be shut out of any digital apparatus or navigation device where voice commands are the only way to activate the closed captioning control.”¹¹ However, in TIA’s experience, the vast majority of device manufacturers allow for more than one means to activate and deactivate accessibility features beyond just voice activation or gestures (*e.g.*, in addition to a voice command or gesture, visual menus are accessible for use). While a voice command or gesture may allow for activation with fewer steps than through the traditional means of a visual menu, we believe that this is a benefit of innovation to those who may wish to use it, and that is again consistent with Congress’s intent for “reasonably comparable” and “maximum flexibility.”

From a policy perspective, we also urge the Commission to consider the millions of American consumers who have numerous disabilities that may greatly benefit from the use of voice commands and/or gestures to activate or deactivate accessibility features in products. Further, even those with hearing disabilities can still benefit from the use of gestures when voice commands cannot be utilized. By allowing for certainty of flexibility in compliance for closed captioning activation as the Commission has, device manufacturers will not be impeded from developing new and innovative accessibility solutions for their products that may include voice activation or gestures.

¹¹ Petition at 4.

III. CONCLUSION

TIA supports the Commission's efforts to implement the CVAA consistent with Congressional intent, and based on the above, encourage the Commission to reject the Petition.

Respectfully submitted,

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