

Via Electronic Filing

July 10, 2024

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: *Accessibility of User Interfaces, and Video Programming Guides and Menus* – MB
Docket No. 12-108

Dear Ms. Dortch:

On July 8, 2024, representatives of the Consumer Technology Association (CTA)¹ met with the Media Bureau and Consumer and Governmental Affairs Bureau (Bureaus) to discuss the draft Third Report and Order (Draft Order) in the above-captioned proceeding that, if adopted, would adopt new rules governing closed captioning display settings.² A full list of meeting participants is attached.

During the meeting, CTA noted its appreciation for the work the Commission has done to think through how closed captioning can continue to be improved and highlighted CTA's engagement with consumer groups over the last several years. CTA remains committed to collaborating on accessibility solutions with individuals with disabilities and advocacy groups representing individuals with disabilities.

CTA offered the following suggestions to clarify the Draft Order so that the consumer technology industry can meet the needs of individuals with disabilities while remaining compliant with the Commission's requirements:

- With respect to previewability, we noted that with small screens it may not be possible to fit programming, sample captions, and *all* caption display settings on screen at once,

¹ As North America's largest technology trade association, CTA® is the tech sector. Our members are the world's largest innovators—from startups to global brands—helping support more than 18 million American jobs. CTA owns and produces CES®—the most powerful tech event in the world.

² *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Third Report and Order, MB Docket No. 12-108, FCC-CIRC2407-05 (rel. Jun. 27, 2024) (Draft Order).

as the captioning settings required by the FCC’s rules are extensive.³ As written, the Draft Order does not prohibit manufacturers presenting additional settings “below the scroll” to allow settings and previewed text to be large enough to understand and navigate.⁴ Even so, it would be helpful for the Commission to add clarifying language along the lines of “not all the settings must be made available along with the previewed text on the screen at the same time.” Such flexibility will be required on smaller screens, especially where an individual has increased default sizes. CTA also noted that on small or less sophisticated devices, overlaying the captioning menu over currently playing video may be challenging to implement on some combinations of hardware and operating systems.

- With respect to the consistency and persistence prong, CTA requested the Commission to clarify that the “their” in draft rule 79.103(e)(1)(iv)(B) refers to MVPDS and their applications.⁵ Along the same lines, defining or clarifying the term “host devices” in both draft rules 79.103(e)(1)(iv)(B) and 79.103(e)(1)(iv)(C) would clear up some ambiguity created when applying the joint cable-advocates proposal to generally applicable rules.⁶
- CTA appreciates that the Commission refrains from mandating particular technological implementations in the Draft Order. With respect to the use of a long-press button, it would be helpful for the Commission to recognize a long-press of a key on a remote as one example of a mechanism that is comparable to a button, key, or icon.⁷

CTA requests these limited refinements to the Draft Order in the spirit of being a constructive partner with consumers, the FCC and others in industry.⁸ CTA appreciates and requests that the FCC maintain its inclusion of the technically feasible and achievability exceptions along with the

³ See, e.g., 47 C.F.R. § 79.103(c) (requiring several captioning functionalities that users must be able to change on apparatus); 47 C.F.R. § 79.102 (captioning for digital televisions).

⁴ See Draft Order ¶ 27.

⁵ *Id.* at App. A. Specifically, the word “their” in § 79.103(e)(1)(iv)(A) and (B) should be replaced with “an MVPD’s.”

⁶ *Id.* CTA confirmed its understanding that draft rule 79.103(e)(1)(iv)(C) essentially requires manufacturers of covered apparatus to make available the devices’ closed caption settings to video applications so that, at the application developer’s discretion, applications can use device settings. See Draft Order ¶ 28. As a result, “host device(s)” in 79.103(e)(1)(iv)(B) and (C) should be replaced with “apparatus.”

⁷ *Id.* ¶ 25. Although CTA is sensitive that the Commission should not mandate or lock-in technologies, recognizing examples of compliant implementations does not risk chilling innovation in the same way as a mandate. Of course, not all apparatus will have remotes, so it is important that a long-press not be the only compliant implementation.

⁸ CTA still has concerns about the legal underpinnings of the action, as it has discussed many times in the record. See, e.g., Letter from J. David Grossman, Vice President Regulatory Affairs, CTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 2-3 (Mar. 20, 2023) (describing how adopting regulatory closed captioning display settings exceeds the FCC’s statutory authority).

agency's case-by-case waiver process.⁹ CTA also commends the FCC for applying the new requirements on equipment manufactured after the compliance deadline (two-years after *Federal Register* publication).¹⁰ Even with the requested clarifications, manufacturers will have to expend significant resources to comply with the new rules and these resources are best spent looking forward so that manufacturers can offer readily accessible closed captioning display settings (as defined by the Commission) as soon as it is technically feasible.¹¹ As the implementation of the new rules in the Draft Order evolves CTA welcomes the opportunity for further collaboration, education and outreach to address accessibility concerns related to closed captioning display settings.

Pursuant to Section 1.1206 of the FCC's rules, this letter is being electronically filed. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,

/s/ J. David Grossman
J. David Grossman
Vice President, Policy & Regulatory Affairs

/s/ Rachel Nemeth
Rachel Nemeth
Sr. Director, Regulatory Affairs

/s/ Brian Markwalter
Brian Markwalter
Sr. Vice President, Research & Standards

Enclosure

cc: FCC Meeting Attendees (via email)

⁹ Draft Order at ¶¶ 45-48.

¹⁰ See, e.g., Comments of Consumer Technology Association, MB Docket No. 12-108, at 8-9 (April 15, 2024) (requesting that any regulation the Commission ultimately adopts avoid design mandates, be forward-looking, provide a reasonable implementation deadline and incorporate targeted exemptions consistent with congressional intent and past Commission practice).

¹¹ Draft Order ¶ 52.

Attendees

CTA

David Grossman, Vice President, Policy & Regulatory Affairs
Rachel Nemeth, Senior Director, Regulatory Affairs
Brian Markwalter, Senior Vice President, Research & Standards
Rachel Wolkowitz, Wilkinson Barker Knauer, LLP (Counsel to CTA)

Media Bureau

Holly Saurer
Hillary DeNigro
Maria Mullarkey
Diana Sokolow

Consumer and Governmental Affairs Bureau

Bob Aldrich
Suzy Rosen Singleton

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July 11, 2024

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: *Accessibility of User Interfaces, and Video Programming Guides and Menus –*
MB Docket No. 12-108

Dear Ms. Dortch:

On July 10-11, 2024, David Grossman, Brian Markwalter and Rachel Nemeth, all of Consumer Technology Association (CTA),¹ and Rachel Wolkowitz, of Wilkinson Barker Knauer, LLP, counsel to CTA, met separately with David Strickland in the office of Chairwoman Rosenworcel, Lauren Garry in the office of Commissioner Carr, Hannah Lepow and Laythan Oweis in the office of Commissioner Starks, Adam Cassady and Sara Rahmjoo in the office of Commissioner Simington, and Deena Shetler in the office of Commissioner Gomez² to discuss the draft Third Report and Order (Draft Order) in the above-captioned proceeding that, if adopted, would adopt new rules governing closed captioning display settings.³

During the meeting, CTA noted its appreciation for the work the Commission has done to think through how closed captioning can continue to be improved and highlighted CTA's engagement with consumer groups over the last several years. CTA remains committed to collaborating on accessibility solutions with individuals with disabilities and advocacy groups representing individuals with disabilities.

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² CTA met Mr. Strickland on July 10, and the other offices on July 11. David Grossman did not attend the meeting with Ms. Shetler.

³ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Third Report and Order, MB Docket No. 12-108, FCC-CIRC2407-05 (rel. Jun. 27, 2024) (Draft Order).

CTA offered the following suggestions to clarify the Draft Order so that the consumer technology industry can meet the needs of individuals with disabilities while remaining compliant with the Commission's requirements:

- With respect to previewability, we noted that with small screens it may not be possible to fit programming, sample captions, and *all* caption display settings on screen at once, as the captioning settings required by the FCC's rules are extensive.⁴ As written, the Draft Order does not prohibit manufacturers presenting additional settings "below the scroll" to allow settings and previewed text to be large enough to understand and navigate.⁵ Even so, it would be helpful for the Commission to add clarifying language along the lines of "not all the settings must be made available along with the previewed text on the screen at the same time." Such flexibility will be required on smaller screens, especially where an individual has increased default sizes. CTA also noted that on small or less sophisticated devices, overlaying the captioning menu over currently playing video may be challenging to implement on some combinations of hardware and operating systems.
- With respect to the consistency and persistence prong, CTA requested the Commission to clarify that the "their" in draft rule 79.103(e)(1)(iv)(B) refers to MVPDS and their applications.⁶ Along the same lines, defining or clarifying the term "host devices" in both draft rules 79.103(e)(1)(iv)(B) and 79.103(e)(1)(iv)(C) would clear up some ambiguity created when applying the joint cable-advocates proposal to generally applicable rules.⁷
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CTA requests these limited refinements to the Draft Order in the spirit of being a constructive partner with consumers, the FCC and others in industry.⁹ CTA appreciates and requests that the FCC maintain its inclusion of the technically feasible and achievability exceptions along with the agency's case-by-case waiver process.¹⁰ CTA also commends the FCC for applying the new requirements on equipment manufactured after the compliance deadline (two-years after *Federal Register* publication), and requests that the Commission not shorten the compliance period set forth in the Draft Order.¹¹ Even with the requested clarifications, manufacturers will have to expend significant resources to comply with the new rules and these resources are best spent looking forward so that manufacturers can offer readily accessible closed captioning display settings (as defined by the Commission) as soon as it is technically feasible.¹² As the implementation of the new rules in the Draft Order evolves CTA welcomes the opportunity for further collaboration, education and outreach to address accessibility concerns related to closed captioning display settings.

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