

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)
Media Bureau Seeks to Refresh the)
Record on Accessibility Rules for) MB Docket No. 12-108
Closed Captioning Display Settings)
Under the Television Decoder)
Circuitry Act)

Reply Comments of Accessibility Advocacy and Research Organizations

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Discussion

The above-signed Accessibility Advocacy and Research Organizations respectfully reply to comments on the Commission’s Public Notice seeking to refresh the record in the above-referenced docket (“*CC Display Settings PN*”).¹ The Advocacy Organizations collectively advocate for equal access to video programming for the more than 48 million Americans who are deaf, hard of hearing, DeafBlind, or have other disabilities. The Research Organizations work in conjunction with the Advocacy Organizations to address the technical challenges faced in securing access to video programming.

Despite the compelling need and well-established legal authority for the Commission to act, industry commenters urge a course of inaction.² We urge the Commission to reject the industry’s invitation and exercise its authority by acting quickly based on the ample record and legal authority supporting requiring caption display settings to be readily accessible through the provision of interfaces that are proximate, discoverable, and previewable and ensure consistency and persistence.³ Caption display settings have remained inaccessible over the past six years, and conclusory claims of improvement by the industry do not contradict the substantial evidence of problems on the record. Contrary to industry commenters’ arguments, the Commission possesses ample authority to act under the Television Decoder Circuitry Act (TDCA) and the Twenty-First Century

¹ *Media Bureau Seeks to Refresh the Record on Accessibility Rules for Closed Captioning Display Settings Under the Television Decoder Circuitry Act*, Public Notice, MB Docket No. 12-108 (Jan. 10, 2020) (“*CC Display Settings PN*”), <https://www.fcc.gov/document/media-bureau-seeks-refresh-record-closed-captioning-rules>.

² See Comments of Consumer Technology Association (CTA) (Feb. 17, 2022), <https://www.fcc.gov/ecfs/filing/1021796299894>; Comments of ACA Connects—America’s Communications Association (ACA) (Feb. 17, 2022) <https://www.fcc.gov/ecfs/filing/102180633207376> ; Comments of Internet & Television Association (NCTA) (Feb. 17, 2022) <https://www.fcc.gov/ecfs/filing/1021768411429>.

³ See generally Comments of TDI, et al. (Feb. 17, 2022) (“2022 Accessibility Coalition Comments”), <https://www.fcc.gov/ecfs/filing/10218268018374>.

Communications and Video Accessibility Act (CVAA). We urge the Commission to act quickly and require compliance within one year of the new rules' effective date, rejecting the industry's unsupported calls for lengthy deadlines and its premature contentions about the appropriateness of waiver and achievability determinations.

I. The record confirms that caption display settings remain inaccessible.

While we acknowledge the efforts of industry members to make apparatus and navigation devices generally more accessible since the enactment of the CVAA, industry commenters' general and conclusory assertions of progress toward readily accessible caption displays do not contradict the substantial record of problems underscored in our comments⁴ or the apparent lack of progress in addressing the myriad problems that were identified when the Commission last sought input on this issue in 2016.⁵ As our comments explain, problems with the accessibility of caption display settings widely persist across a range of streaming video applications, apparatus, and navigation devices, where customizing the display of captions requires navigating a dizzying array of interfaces that remain esoteric, inscrutable, and difficult to find and use.⁶

At the outset, we note that the record is devoid of comments from dedicated streaming platform providers such as Netflix, YouTube, and Disney Plus. Our unopposed comments demonstrating the problems with these platforms, without more, justify the Commission taking action quickly to ensure the accessibility of caption display settings.⁷

Nevertheless, the Consumer Technology Association (CTA) claims the consumer electronics industry “consistently provides new and better tools to expand access” and that “TVs on the market provide a wide array of accessibility options” through a “variety

⁴ 2022 Accessibility Coalition Comments at 3–7.

⁵ Comments of TDI, et al. at 7–9 (Feb. 23, 2016) (“2016 Accessibility Coalition Comments”), <https://www.fcc.gov/ecfs/filing/60001486622>.

⁶ 2022 Accessibility Coalition Comments at 3–7.

⁷ *Id.* at 3-7.

of available user interface designs.”⁸ CTA even claims that “[t]he design of user interfaces and how people interact with a product . . . are some of the most innovative areas of the consumer technology industry.”⁹

In support of these contentions, CTA provides not a single concrete example, much less systematic data, directly responding to the Commission’s detailed inquiry into the accessibility of caption display settings or the problems raised in our comments. CTA’s only support for its proposition that innovation has filled the accessibility gap for caption display settings is a range of generic and irrelevant references to events and items that have, at best, tenuous or non-existent connections to the Commission’s inquiry, including:

- An award that CTA itself gave for features on a remote control in 2022 with a vague description of the availability of a “dedicated hotkey for the accessibility menu” and “[d]iverse subtitle adjustments (location, text size),” which does not even indicate implementation of all the specific technical capabilities required for caption display settings under the Commission’s existing rules;¹⁰
- A second award that CTA itself gave in 2021, which does not describe how its caption display setting interface works, aside from vague allusions to “Caption Moving” and “Sign Language Zoom” features, and which otherwise does not

⁸ CTA Comments at 4.

⁹ *Id.* at 10.

¹⁰ Compare CTA, *All LG TV Models—Better features for Accessibility* <https://www.ces.tech/Innovation-Awards/Honorees/2022/Honorees/A/All-LG-TV-Models-Better-features-for-accessibili.aspx>, (last visited Mar. 4, 2022), *cited by* CTA Comment at 5 & n.11, *with* 47 C.F.R. § 79.103(c) (requiring, in addition to caption size adjustments, the capability to adjust foreground and background color and opacity, fonts, edge attributes, and various other features).

appear to have any bearing on caption display setting accessibility issues in this proceeding;¹¹

- A “bulletin” released in late 2021, which, according to CTA, provides “recommendations for how users can control the caption attributes on their screens,” but which is not publicly available or explained by CTA beyond a generic note that the recommendations “focus on user controls for televisions;”¹²
- CTA’s standards-setting process that merely focuses testing the caption decoders’ compliance with the captioning rules when receiving ATSC 3.0 broadcasts, an issue with no specific bearing on the accessibility of caption display settings, and which does not even appear to be included on the list of active standards-setting projects cited by CTA;¹³
- A pointer to the Commission’s existing closed captioning rules for apparatuses, which CTA cites as a reason it is engaged in standards work;¹⁴ and
- General references to interactions with disability organizations, a primer on the Commission’s accessibility rules that brags of CTA being “fully engaged . . . to guard against overbroad regulation of devices,”¹⁵ and a mention of unspecified webinars and a technology showcase.¹⁶

¹¹ See CTA, *Smart TV Accessibility*, <https://www.ces.tech/Innovation-Awards/Honorees/2021/Best-Of/S/Smart-TV-Accessibility.aspx> (last visited Mar. 4, 2022), cited by CTA Comments at 5 & n.12.

¹² See CTA Comments at 5 & n.13.

¹³ See CTA, *Status of Active Consumer Technology Association Projects*, https://standards.cta.tech/kwspub/current_projects (last visited Mar. 4, 2022; marked as “last updated” on Mar. 4, 2022), cited by CTA Comments at 5 & n.14.

¹⁴ See CTA Comments at 5 & n.15 (citing 47 C.F.R. § 103(a)).

¹⁵ CTA, *Accessibility Resource Center* at 1, <https://cdn.cta.tech/cta/media/media/advocacy/pdfs/accessibility-resource-center.pdf> (last visited Mar. 4, 2022), cited by CTA Comments at 5 & n.17.

¹⁶ See CTA Comments at 6.

While, by contrast, the Internet & Television Association (NCTA) does cite several specific examples of navigation device user interfaces, these examples illustrate in many cases the precise problems identified in our comments. For example, NCTA cites to Xfinity’s various caption display setting interfaces, which our comments explain—and NCTA affirms—are inconsistent and vary widely from platform to platform.¹⁷ NCTA also cites examples that are:

- Not discoverable, such as requiring pressing unlabeled buttons on the remote;¹⁸
- Not proximate, such as navigating away from programming and into a settings menu¹⁹ or having to call customer service;²⁰ or
- Simply not accessible to all viewers, such as requiring voice commands that cannot be used by viewers with speech disabilities.²¹

Similarly, America’s Communication’s Association (ACA) conveys generic support for the “accessibility of video programming,” but provides not even a single example of its members’ practices, focusing its comments exclusively on its legal objections to requiring its members to provide readily accessible caption display settings.²²

The near-complete dearth of examples of readily accessible interfaces provided by industry commenters—despite more than five years since the start of this proceeding to make improvements and more than two decades since the Commission first adopted its

¹⁷ Compare 2022 Accessibility Coalition Comments at 7 *with* NCTA Comment at 2–3.

¹⁸ See NCTA Comments at 2 (describing interfaces that require “pressing the B button” or “pressing the down arrow” to access caption settings for Xfinity X1 set-top boxes), at 3 (same for Cox).

¹⁹ See *id.* at 2 (Xfinity), 3 (Cox), 4 (Charter), 5 (unidentified midsized provider), 6 (iOS, Android, and other app-based platforms).

²⁰ See *id.* at 5–6 (Comcast, Cox, Charter).

²¹ NCTA Comments at 2 (citing the voice interface as the leading way to access the caption display settings on the Xfinity X1 set-top box), 3 (same for Cox).

²² See ACA Comments at 2–9.

captioning display standards for digital television apparatus²³—demonstrate that it is time for the Commission to act. The Commission should proceed accordingly to require all apparatus and navigation devices to make customizing caption display settings proximate, discoverable, previewable, and consistent and persistent within one year.

II. The Commission has the necessary authority to require caption display settings to be readily accessible.

As our comments explained, the Commission has the necessary authority to require caption display settings to be readily accessible under the plain language and intent of the TDCA, consistent with other federal video programming laws and Commission precedent implementing those laws.²⁴ Industry commenters nevertheless argue for a narrower interpretation of the TDCA and the CVAA, claiming that neither statute allows the Commission to reach the accessibility of caption display settings.²⁵ As our comments explained, these arguments are unavailing.²⁶

CTA argues that “the TDCA, by its terms, provides no authority for the Commission to extend the user control activation requirements on closed captioning display settings.”²⁷ But as our initial comments explained, the TDCA requires the Commission, “as new video technology is developed,” to take action “it determines appropriate to ensure that closed captioning services . . . continue to be available to consumers.”²⁸ The

²³ See generally *Closed Captioning Requirements for Digital Television Receivers*, Report and Order, ET Docket No. 99-254, MM Docket No. 95-176, 15 FCC Rcd. 16,788 (Jul. 21, 2000) (“2000 DTV Captioning Order”).

²⁴ 2022 Accessibility Coalition Comments at 11–16.

²⁵ ACA Comments at 3–8; CTA Comments at 7–9. NCTA also reiterates its earlier arguments without further elaboration. See NCTA Comments at 2 & n.2 (citations omitted).

²⁶ 2022 Accessibility Coalition Comments at 11–16.

²⁷ CTA Comments at 2.

²⁸ TDCA § 4 (47 U.S.C. § 330(b)), cited by 2022 Accessibility Coalition Comments at 12 & n.45.

ability to easily access captions on television sets was the driving factor behind the TDCA, and as the record establishes, customizing caption display settings currently requires users to navigate precisely the type of barriers the TDCA sought to eliminate.²⁹

Requiring captions to be accessible is likewise necessary to serve congressional intent of the TDCA.³⁰ CTA and ACA attempt to draw a distinct between the “availability” of captions required by the TDCA and making caption display settings readily *accessible*.³¹ But as the Commission has consistently recognized, the TDCA does not merely require captions be provided without any regard to their suitability for ensuring accessibility for viewers who are deaf, hard of hearing, or DeafBlind; indeed, “the ‘capability to alter fonts, sizes, colors, backgrounds and more’” is critical to “achiev[ing] Congress’ vision that to the fullest extent made possible by technology, people who are deaf or hard of hearing have equal access to the television medium.”³²

Likewise, relying on the legal authority of the TDCA to ensure that caption display settings are readily accessible is fully consistent with Commission precedent. CTA contends that “the captioning issues the TDCA sought to address were limited to broadcast television receivers” and “analog TV signal[s].”³³ But as CTA later concedes, this contention is contravened by the Commission’s own precedent; indeed, the Commission specifically invoked Section 4 of the TDCA to require closed captioning decoder capabilities in *digital* televisions to include the ability to alter caption size, font, opacity, foreground and background color, and edge attributes.³⁴ Moreover, CTA’s bare

²⁹ 2022 Accessibility Coalition Comments at 12.

³⁰ *Id.* at 12–13.

³¹ See CTA Comments at 8; ACA Comments at 4–8.

³² See *Second FNPRM*, 30 FCC Rcd. at 13,933, ¶ 34 (internal citations omitted) (emphasis added), cited by 2022 Accessibility Coalition Comments at 13–14.

³³ CTA Comments at 7–8.

³⁴ See 2000 DTV Captioning Order, 15 FCC Rcd. at 16,790, 16,792–93, Summary of Requirements & ¶ 10, cited by CTA Comments at 8 & n.29; see also CTA Comments at 8

contention that these actions are “far afield from the broad user interface-related requirements contemplated in the *Further Notice*”³⁵ ignores that requiring caption display settings to be proximate, discoverable, previewable, and consistent and persistent is the logical next step for the Commission to meaningfully advance its goal of removing technical barriers to ensure the usability and readability of captions under the TDCA.³⁶

Moreover, Congress’s enactment of the CVAA complements and ratifies the Commission’s authority to use the TDCA to require caption display settings to be readily accessible.³⁷ CTA contends that “Congress did not intend to change the meaning of Sections [sic] 303(u) and Section 330(b)” in enacting the CVAA.³⁸ However, Section 203(a) of the CVAA substantially expanded Section 303(u) to cover a wide range of “apparatus designed to receive or play back video programming,”³⁹ while Section 203(c) expanded Section 330(b) to require “performance and display standards” for those apparatus,⁴⁰ thereby expressing strong Congressional approval of the Commission’s previous actions to invoke the TDCA to address caption display settings.⁴¹

Finally, the Commission should reject ACA’s argument that a requirement to make caption display settings readily accessible should apply only to apparatus manufacturers

(“Past Commission actions such as the *DTV Closed Captioning Order* satisfied this mandate to narrowly apply the TDCA by promulgating ‘performance and display standards for such decoder circuitry’ in digital televisions”).

³⁵ CTA Comments at 8.

³⁶ 2022 Accessibility Coalition Comments at 14.

³⁷ 2016 Accessibility Coalition Comments at 5.

³⁸ CTA Comments at 9.

³⁹ 47 U.S.C. § 303(u)(1).

⁴⁰ 47 U.S.C. § 330(b).

⁴¹ 2016 Accessibility Coalition Comments at 5. Congress’s ratification of the Commission’s broad understanding of the TDCA in the CVAA likewise underscores that the addition of user interface requirements in Sections 204 and 205 of the CVAA cannot be read as implicitly narrowing the Commission’s authority under the TDCA, contrary to CTA’s contentions. *See* CTA Comments at 9.

and not multichannel video programming distributors (MVPDs),⁴² which would starkly convene Commission precedent. The Commission’s rules under Section 303(u) and 330(b), including the requirements for caption display settings, apply to the wide variety of software pre-installed on video programming apparatus *and* applications, plug-ins, and devices distributed by video programming distributors (VPDs), including MVPDs,⁴³ and the Commission’s logic and legal reasoning for so applying those rules apply with equal force to a requirement to make caption display settings readily accessible.

III. The rules set forth by the Commission should provide a reasonable implementation deadline of one year and defer any consideration of waivers and achievability to individual requests.

Finally, we disagree with CTA’s proposed implementation schedule and waiver approach. Implicitly acknowledging that the Commission is likely to act, CTA proposes an implementation period of three years,⁴⁴ arguing that a longer implementation period will “lead to better outcomes.”⁴⁵ CTA also argues that the Commission should “preserve safety valves, such as waivers” under Rule 1.3.⁴⁶ Finally, CTA requests that the Commission maintain its use of the achievability standard under the CVAA.⁴⁷

CTA fails, however, to offer more than a conclusory explanation for why a significant delay in implementation of a “readily accessible” requirement would lead to better outcomes than a shorter implementation period. Indeed, the very fact that CTA is seeking so much time for its members to rectify existing accessibility problems appears to be little more than an admission that the consumer electronics industry has not made the

⁴² See ACA Comments at 8–9.

⁴³ See *Closed Captioning of Internet Protocol-Delivered Video Programming*, Report and Order 27 FCC Rcd. 787, 806, 839–41, ¶¶ 27, 93–94 (Jan. 12, 2012).

⁴⁴ CTA Comment at 11.

⁴⁵ See *id.* at 11–12.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.*

necessary improvements to the accessibility of caption display settings over the past six years.⁴⁸

Contrary to CTA's arguments, the proposed requirements are clear, simple, and practical and would not be overly burdensome to implement.⁴⁹ While CTA protests the notion of "design mandates,"⁵⁰ the Commission can adopt functional requirements that would leave the industry flexibility for minor variances in design to account for material differences in user interface paradigms for different devices and services.⁵¹ We reiterate that we do not object to industry requests for some flexibility and minor variances in design to account for differences across devices and services. But it has been 21 years since the Commission first adopted its caption display settings for digital apparatus and five years since the Commission opened this proceeding; consumers should have to wait no longer to be able to easily access these settings across all of their apparatus and navigation devices. One year is a reasonable deadline to accomplish this objective.⁵²

Finally, there is little cause for the Commission to adopt general waiver requests or allow a general defense based on achievability to create blanket exemptions or excuse compliance with these requirements at this time. Given the many years that the industry has had to implement the simple functionality that would be required by this rule, any grants of waiver, including those based on achievability, should be recognized only upon the detailed presentation of specific data and information demonstrating technical infeasibility or other unusual circumstances—none of which are suggested by the examples raised by industry commenters.

⁴⁸ *Id.* at 11-12.

⁴⁹ 2016 Accessibility Coalition Comments at 5–8.

⁵⁰ CTA Comments at 9–11.

⁵¹ 2022 Accessibility Coalition Comments at 10–11.

⁵² As our comments explain, the proposed rules and associated deadlines should apply with equal force to both manufacturers and service providers. *Id.* at 10–11.