

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART**

Re: Accessibility of User Interfaces, and Video Programming Guide 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 Act of 2010, MB Docket No. 12-107.

Today, the Commission issues the final set of rules required by the Twenty-First Century Communications and Video Accessibility Act (CVAA). We certainly didn't save the easiest for last. Sections 204 and 205 of the CVAA present many interpretive challenges. In fact, they are probably the most difficult statutory provisions I have encountered during my tenure at the Commission.

Much hard work has gone into this item, and on the whole, I believe that we have ended up with a good result. The rules that we adopt today will help our nation's blind and visually impaired citizens access video programming more easily while also providing the private sector with sufficient flexibility to achieve this important objective. I commend all stakeholders for coming to the table and helping the Commission formulate the sensible approach that is embodied in this Order.

I am particularly pleased that this item remains true to the language of the statute in distinguishing devices covered by Section 204 from those covered by Section 205. As I indicated in my statement accompanying the Notice of Proposed Rulemaking,¹ the CVAA clearly provides that navigation devices—whether or not they are supplied by a multichannel video programming distributor—are covered by Section 205 while digital apparatus that are not navigation devices are covered by Section 204.² The regulations promulgated in this item respect this dividing line drawn by Congress.

Although I approve of the vast majority of today's Order, I am concurring in part for two reasons. *First*, for the reasons set forth in my statement accompanying the *IP Closed Captioning Reconsideration Order*,³ I continue to believe that items such as digital still cameras and baby monitors are not “designed to receive or play back video programming transmitted . . . simultaneously with sound.” The language of the CVAA (“designed to”) indicates that we should not focus solely on a device's capabilities but rather employ an objective intent test under which we ask whether a reasonable person would conclude that a device was intended to receive or play back video programming. Applying this test, I do not think that digital still cameras and baby monitors fall within the scope of Section 204. I appreciate the Commission's decision here to defer manufacturers' obligations with respect to such equipment for a lengthy period of eight years. And I recognize that the Commission's interpretation of Section 204 today is consistent with our interpretation of similar language in Section 203. Nevertheless, I continue to believe that the Commission's prior interpretation was flawed and that the better course in this item would

¹ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Notice of Proposed Rulemaking, 28 FCC Rcd 8506, 8554 (2013) (Statement of Commissioner Ajit Pai, Approving in Part and Concurring in Part), available at <http://go.usa.gov/W2Tw>.

² See 47 U.S.C. § 303(aa)(4) (“[I]n applying this subsection the term ‘apparatus’ does not include a navigation device, as such term is defined in section 76.1200 of the Commission’s rules (47 CFR 76.1200).”); 47 U.S.C. § 303(bb)(1) (covering “navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations)”).

³ See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-54, Order on Reconsideration and Further Proposed Notice of Rulemaking, 28 FCC Rcd 8785, 8828–29 (2013) (Statement of Commissioner Ajit Pai, Approving in Part and Concurring in Part), available at <http://go.usa.gov/W2Te>.

have been to correct our past mistake rather than trying to work around it by establishing an eight-year compliance deadline.⁴

Second, I harbor serious doubts about the decision to require *all* navigation devices with built-in closed captioning capability to provide access to that capability through a mechanism reasonably comparable to a button, key, or icon. Section 205(b)(3) of the CVAA states: “An entity shall *only* be responsible for compliance with the requirements added by this section with respect to navigation devices that it provides to a requesting blind or visually impaired individual.”⁵ And the mandate for navigation devices to provide a mechanism reasonably comparable to a button, key, or icon that can access closed captioning is indisputably a requirement added by Section 205 of the CVAA. The statutory language is thus unambiguous: An entity is only responsible for complying with the requirement to provide such a mechanism when a navigation device is provided to a requesting blind or visually impaired individual.

To be sure, such an outcome would be unusual to say the least. After all, closed captioning is of the greatest use to individuals with a hearing impairment, not a visual impairment. Today’s item, however, recognizes that closed captions can be of benefit to those with a visual impairment.⁶ So perhaps Congress thought that individuals with visual impairments would have the greatest difficulty accessing closed captions (hence the need to give them an easy way of accessing closed captioning capability). Or perhaps Congress simply made a drafting error.⁷ Whatever the case, although I believe that the Commission’s decision on this issue is well intentioned, I do not believe that Congress left us with the discretion to impose a policy preference different than the one dictated by the plain meaning of the CVAA.⁸

All of this, however, should not overshadow my general support for this item and my appreciation for the yeoman’s work done by Commission staff in this proceeding. Indeed, this proceeding reflects our agency at its best. Through an open dialogue with all stakeholders and collaboration among all Commissioners’ offices, the Media Bureau, the Consumer and Governmental Affairs Bureau, and the Office of General Counsel, we were able to reach a consensus that should serve everyone well.

Finally, I look forward to working with my colleagues in addressing the issues teed up in the Further Notice of Proposed Rulemaking. I appreciate the Commission’s decision to defer action on those issues where the record was insufficient to allow us to move forward at this time. I’m especially hopeful that the rules we adopt today and those we adopted in the *IP Closed Captioning Order* will be given time to work before we impose substantially more regulation. As a general matter, we should allow room for innovative solutions to emerge in response to our rules implementing the CVAA before reaching any judgment as to whether yet more rules are necessary.

⁴ I also continue to believe, as explained in my statement accompanying the *IP Closed Captioning Reconsideration Order*, that removable media players are not “designed to receive or play back video programming transmitted . . . simultaneously with sound.” *See id.* I thus would exclude them from our regulations implementing Section 204 as well.

⁵ Pub. L. No. 111-260, § 205(b)(3), 124 Stat. 2751 (2010) (emphasis added).

⁶ *Order* at note 262.

⁷ *Cf. AT&T Corp. v. Iowa Utils. Board*, 525 U.S. 366, 397 (1999) (“It would be gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction.”).

⁸ *Cf. U.S. v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95–96 (1820) (Marshall, C.J.) (“Where there is no ambiguity in the words [of a statute], there is no room for construction.”).