

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
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 No. 10-213
)	
Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996)	WT Docket No. 96-198
)	
In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision)	CG Docket No. 10-145
)	

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON Coalition”)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.² The VON Coalition supports the Commission’s steps to ensure that individuals with disabilities can access innovative communications technologies in accordance with the Twenty-First Century

¹ The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. VON Coalition members include AT&T, Broadvox, BT, Google, iBasis, Microsoft, Skype, T-Mobile, Vonage and Yahoo.

² See *In the Matter of 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; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*; Notice of Proposed Rulemaking, 26 FCC Rcd 3133 (Mar. 3, 2011) (“NPRM”); *Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 76 Fed Reg. 13,800 (Mar. 14, 2011).

Communications and Video Accessibility Act of 2010 (“CVAA”). It submits the following proposals for achieving that goal while encouraging the continued development of Internet Protocol (“IP”)-enabled communications.

BACKGROUND

VON Coalition members have been leaders in making communications accessible to consumers with disabilities. As early as 1999, the VON Coalition announced the industry’s voluntary commitment to making emerging voice over Internet protocol (“VoIP”) products and services user-friendly for consumers with disabilities. Since then, the IP communications industry has not only adhered to accessibility standards and guidelines developed by the Commission and other entities, it also has worked diligently to incorporate TeleTypewriter/Telecommunications Device for the Deaf (“TTY/TDD”) and other features such as instant messaging (“IM”) into IP-enabled communications technologies. The integration of voice, video, and data into single platforms provides all consumers – especially those with disabilities – more freedom to choose how to communicate with each other.³

The VON Coalition reaffirmed its support for increasing access to IP-based communications by the community of individuals with disabilities in its response to the Commission’s October 21, 2010 Public Notice regarding the CVAA.⁴ The CVAA was enacted to ensure that individuals with disabilities can access new communications technologies. The

³ For more information about the role of IP communications in increasing accessibility to communications and choice for consumers with disabilities, *see In the Matter of Advanced Communications Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Comments of the Voice on the Net Coalition, CG Docket No. 10-213, 2-7 (Nov. 22, 2010), incorporated herein by reference.

⁴ *See* Consumer & Government Affairs Bureau and Wireless Telecommunications Bureau Seek Comment on Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010, 25 FCC Rcd 14589 (Oct. 21, 2010).

CVAA adds Sections 716, 717, and 718 to the Communications Act of 1934, and directs the Commission to create implementing regulations consistent with the text and goals of the CVAA.⁵

Among the many issues raised in the *NPRM*, the Commission seeks comment on (1) electing not to exclude products and services with purely incidental advanced communications features from the scope of the regulation,⁶ (2) whether “between individuals” restricts the scope of electronic messaging products and services covered by the regulation,⁷ (3) the meaning and scope of “*interoperable* video conferencing,”⁸ (4) what the test should be for granting waivers from the requirements and whether there should be certain limitations on those waivers,⁹ (5) whether compliance may be achieved by offering a range of accessibility features at varying prices across product lines,¹⁰ (6) how to define “compatibility” in the context of assistive technologies,¹¹ and (7) how best to clarify various actors’ obligations and culpability in an enforcement context.¹²

DISCUSSION

The IP communications industry constantly strives to increase communications options for consumers and, through technological innovation, has revolutionized the choices available to consumers with disabilities. The VON Coalition supports the Commission’s efforts, in accord with the CVAA, to ensure that individuals with disabilities have access to these options. To achieve this goal, while also ensuring that the industry has sufficient freedom to continue to

⁵ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751.

⁶ *NPRM* at ¶¶ 28-32.

⁷ *Id.* at ¶¶ 33-34.

⁸ *Id.* at ¶¶ 41-46.

⁹ *Id.* at ¶¶ 54-60.

¹⁰ *Id.* at ¶¶ 74-76.

¹¹ *Id.* at ¶¶ 88-90.

¹² *Id.* at ¶¶ 116, 134-35.

develop technologies useful to consumers with disabilities and remaining faithful to Congress's mandates in the CVAA, the Commission should adopt narrow definitions of critical terms, grant waivers to services that are not designed primarily for advanced communications, consider accessibility standards across product lines, and outline clear, reasonable compliance obligations.

I. Definitions of “Advanced Communications Services,” “Electronic Messaging Between Individuals,” and “Interoperable Video Conferencing” Should Be Narrowly Construed

Adopting appropriately tailored definitions of terms gives achieves the Congressional intent behind the CVAA while maintaining an important degree of regulatory flexibility necessary to preserve and foster competition and innovation. The Commission should not adopt definitions that sweep too broadly to include offerings with purely incidental advanced communication service (“ACS”) components. Even though “the statutory definition of non-interconnected VoIP does not exclude offerings with a purely incidental VoIP component”,¹³ regulating every product or service that incidentally includes ACS would discourage manufacturers and providers from experimenting with such capabilities in technologies that are designed for purposes other than advanced communications. Nor did Congress intend that mere incidental ACS components would trigger the obligations of the CVAA; this is evident in its inclusion of a waiver for such products and services.¹⁴ Even if the Commission declines to limit the definition of “ACS” it should give careful consideration to waiver requests to exclude such products and services from the regulations, as discussed below.

The terms “between individuals” and “interoperable” also should be narrowly construed within the context of the language in the CVAA. The inclusion of “between individuals” after “electronic messaging” and “interoperable” before “video conferencing” limits the scope of the

¹³ See NPRM, at ¶ 32.

¹⁴ 47 U.S.C. § 617(h).

services with which they are paired. The phrase “between individuals” in the definition of “electronic messaging service” precludes regulation of machine-to-machine, machine-to-human, and human-to-machine communications. Accessibility requirements should be imposed only on “more traditional, two-way, interactive services such as text messaging, instant messaging, and electronic mail...”¹⁵

“Interoperable” limits the scope of video conferencing services covered by the CVAA and should be defined, as it is commonly understood to mean, as a system that is able to work with or use the equipment of another system.¹⁶ Arguments that “interoperable” does not modify video conferencing, so that all video conferencing services are covered, or that it requires that video conferencing services be made interoperable are incorrect. First, the goal of the Act is to ensure individuals with disabilities can access ACS, not to achieve interoperability. Second, interpreting “interoperable video conferencing” to include all video conference services renders the inclusion of “interoperable” meaningless. Although Congress did not change the definition of “interoperable video conferencing service” from that of “video conferencing service” in the

¹⁵ H.R. Rep. No. 111-563, at 23 (2010).

¹⁶ See Merriam-Webster Dictionary, available at <http://www.merriam-webster.com/dictionary/interoperability>. Such an interpretation of “interoperable” is consistent with the Commission’s definition in other proceedings. See 47 C.F.R. § 90.7 (defining “interoperable” in the public safety wireless context as “An essential communication link within...systems which permits two units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.”); *Telecommunication Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442 (May 9, 2006) (imposing interoperability obligation such that “All VRS consumers should be able to place a VRS call through any of the VRS providers’ service, and all VRS providers should be able to receive calls from, and make calls to, any VRS consumer.”); 47 C.F.R. § 51.325(b) (defining “interoperability” as “the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.”).

draft legislation,¹⁷ Congress cannot have intended “interoperable” to be a meaningless modifier. The Commission should define that term according to its plain meaning. Restraint from regulation of video conferencing services that are not currently interoperable also will ensure these technologies have the flexibility to continue developing.

II. Waivers Should Be Liberally Granted for Products Designed Primarily For Purposes Other Than ACS

As discussed above, the Commission should waive regulations adopted in this proceeding for products and services designed primarily for purposes other than accessing advanced communications.¹⁸ Waivers for services or equipment designed for purposes other than using ACS should be based on the primary purpose for which the device was designed, not on whether the ACS features are separable from those functions, and not on the purpose for which a particular user employs the device. This test is dictated by Section 716(h)(1), which states that the Commission may waive the requirements for a class of services or equipment that “is designed for multiple purposes but is designed primarily for purposes other than using [ACS].”¹⁹ A consumer may use the product for a purpose or feature other than what it was designed for, and that feature may be separable from the primary purpose for which the product was designed, but those are not the guidelines established by Congress. Congress directs the Commission to look at the manufacturer’s or provider’s design.

This test does not interfere with the goal of ensuring individuals with disabilities can use advanced communications because consumers generally do not use products not designed for

¹⁷ See NPRM, at ¶ 45.

¹⁸ See 47 U.S.C. § 617(h).

¹⁹ *Id.* (emphasis added).

ACS, such as gaming products, primarily as a mode of communications.²⁰ Where the ACS features and uses of a device are secondary to its primary purpose, a waiver for the class is appropriate. Class-based waivers in that instance are a judicious use of the Commission's resources and provide clarity about which products are subject to the regulation. These waivers should be able to be filed confidentially and should not have a time limit. As long as ACS continues to be an ancillary function of the product – and the manufacturer or service provider is not designing or marketing the product based on its ACS features – the waiver should remain.

III. Accessibility Standards Should Balance Demands on Manufacturers and Providers With Making Products and Services Available to Individuals with Disabilities

Accessibility standards must ensure that consumers with disabilities can use advanced communications, while providing flexibility to manufacturers and service providers in developing communications technologies. Therefore, when a company makes a good faith reasonable effort to incorporate accessibility features in different products across multiple product lines, it complies with the Act, even if a particular offering is not accessible.²¹

The regulations should compel companies to provide consumers who have disabilities with meaningful choices; requiring that every product be accessible may actually decrease the number of products available to consumers and narrow the range of functions and price points available. To encourage innovation, the Commission should allow companies to retain the flexibility to develop new methods for meeting the needs of individuals with disabilities. At

²⁰ Although the Commission has declined to consider the availability of similar equipment and services, to the extent that comparable communications equipment and services exist on their own, separate from gaming equipment and services, it underscores the idea that the communications are not the primary reason consumers access these products.

²¹ The same principle should apply to a product that has multiple modes for advanced communications, for example IM. The FCC should not require that each mode within that product be made accessible, as long as the product as a whole is accessible to users with disabilities.

most, the Commission should examine accessibility features to create safe harbors or other guideposts that companies may use in compliance efforts.

For devices in which accessibility is not achievable but compatibility with assistive technologies is required, accessibility programming interfaces (“APIs”) are critical in enabling interoperability between the two. Because the United States Access Board has expertise in compatibility, the Commission should defer to the Access Board’s determination of “compatibility” under Section 508 of the Rehabilitation Act.²² This will create consistency between the CVAA and Section 508, and make the best use of the Access Board’s expertise.

IV. Enforcement Provisions Should Clarify Each Entity’s Obligations and Allow Adequate Time for Them To Meet Those Obligations

The Commission should give industry time to incorporate the requirements under these provisions. Specifically, the Commission should allow a two-year phase-in period for products and services designed after the rules go into effect, adjusting as may be necessary for different product cycles. The Commission should not hold products and services designed before the rules go into effect liable for non-compliance, and also should exempt beta software and products.

It is important that each industry participant knows its obligations for products and services subject to the rules the Commission adopts in the instant proceeding. The VON Coalition suggests that a manufacturer of a device should be responsible for third party software it provides to users, but that application developers should be responsible for software applications made directly available to customers via retail. In other words, an application developer that sells its application through an “app store” is culpable if that application is inaccessible, not the manufacturer of the end-user’s device or the manufacturer of the “app

²² See <http://www.access-board.gov/508.htm>.

store”, if this is a separate entity. The Commission also should review complaints and allow named defendants an opportunity to respond with an eye toward ensuring that the complaint is directed at the proper party.

The VON Coalition believes that implementing this timeline for compliance and clarifying the responsibility of regulated parties, in addition to the preceding recommendations, will best enable companies to ensure that consumers with disabilities can access IP-enabled communication as these technologies continue to evolve and new innovations come into being.

CONCLUSION

The FCC should act in accordance with the recommendations herein.

VOICE ON THE NET COALITION

/s/

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April 25, 2011