

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Advanced Communication Provisions of the)
Twenty-First Century Communications and) CG Docket No. 10-213
Video Accessibility Act of 2010)

To: The Commission

COMMENTS OF VONAGE HOLDINGS CORPORATION

Vonage Holdings Corporation (“Vonage”) submits these comments in response to Public Notice, DA 10-2029, released October 21, 2010 (the “Public Notice”), seeking comment on the Commission’s implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010.¹ Section 716 requires providers of advanced communications services and manufacturers of equipment and software used with those services to ensure that their equipment and software is accessible to and usable by persons with disabilities, unless not achievable. Vonage addresses below (1) the applicability of Section 716 to interconnected VoIP providers already subject to Section 255² of the Communications Act of 1934, as amended (the “Communications Act”); (2) the exception to accessibility requirements in instances when the requirements are not achievable; and (3) the rule of construction prohibiting the Accessibility Act of 2010 from being construed to mean that every feature and function of every device or service must be accessible for every disability.

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010), *amended*, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (collectively, the “Accessibility Act of 2010”).

² 47 C.F.R. § 255.

Introduction

Vonage, which is a major provider of interconnected VoIP service, supports service accessibility for people with disabilities. To support consumers with hearing disabilities, Vonage's interconnected VoIP service is compatible with TTY devices that provide access to text-based services and offers 711 dialing to reach state relay services. In addition, certain features provided with Vonage's interconnected VoIP service provide useful functionality for consumers with disabilities. For instance, Vonage Visual Voicemail transcribes a customer's voicemail and sends the transcription to the customer's email address. This helps make voicemails more accessible to individuals with hearing disabilities. Another feature that could be useful for consumers with physical or motor skills disabilities is Click-2-Call. By allowing consumers to automatically dial phone numbers in any computer program and take that call on their home phone connected to Vonage's interconnected VoIP service, Click-2-Call eliminates the need for consumers to dial numbers on their home phone's key pad. Vonage supports implementation of the Accessibility Act of 2010 to encourage and facilitate access to services by people with disabilities in a way that is reasonable and not burdensome on service providers.

Applicability of Section 255

The Public Notice "seek[s] comment on how to treat interconnected VoIP service, which now is covered by Sections 255 and 716."³ Vonage agrees that interconnected VoIP service is covered by Section 255 of the Communications Act. However, Vonage takes issue with the characterization in the Public Notice claiming that interconnected VoIP service is also covered by Section 716 of the Accessibility Act of 2010. Section 716(f) is clear and unambiguous when it states:

³ Public Notice at 5.

The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010. Such services and equipment shall remain subject to the requirements of Section 255.⁴

Since interconnected VoIP service is already subject to Section 255 of the Communications Act, Section 716(f) makes clear that interconnected VoIP is not subject to Section 716 of the Accessibility Act of 2010.

Vonage submits that Section 716(f) should be followed in a way that is straight forward and does not create a conflict where none need exist. For example, when new features are added to an interconnected VoIP service, the Commission should construe such new features as simply that--new features and not a new service. Under Vonage's proposed construction, when new features are added to interconnected VoIP service, the entire service, including the new features would continue to be subject to Section 255. To do otherwise would lead to a complicated and extremely difficult parsing of what aspects of interconnected VoIP existed prior to enactment of the Video Accessibility Act of 2010 and what aspects existed after enactment, which would result in regulations that would be unnecessarily complicated, difficult to interpret, difficult to comply with, and difficult to enforce.

The same analysis applies to methods of obtaining access to interconnected VoIP service. From the standpoint of access for individuals with disabilities, it should not matter whether interconnected VoIP service is accessed via wireline broadband, cable modem, unlicensed Wi-Fi or licensed wireless services. In all such instances, the customer still obtains an interconnected VoIP service that is subject to Section 255. The same is true whether the service is fixed in one place, is nomadic or is mobile. In every case, it is interconnected VoIP service subject to Section

⁴ Accessibility Act of 2010 § 716(f).

255. Since interconnected VoIP service is a single type of application that can be used on various types of broadband connections, all interconnected VoIP service is subject to Section 255 of the Communications Act and is not subject to Section 716 of the Video Accessibility Act of 2010 pursuant to Section 716(f).

Definition of Achievable

Section 716 of the Video Accessibility Act of 2010 provides that its requirements need not be met in regard to particular services and equipment if such requirements are not achievable.

The act goes on to define “achievable” as follows:

For purposes of this section and section 718, the term “achievable” means with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:

- (1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question.
- (2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.
- (3) The type of operations of the manufacturer or provider.
- (4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.⁵

These factors make it clear that the definition of achievable is a flexible one that varies in accordance with what is reasonable under the circumstances. For example, if the cost of meeting the requirements is unduly expensive in relation to the revenues generated from the product or service, then meeting the requirements is not achievable. In this regard, if a service were offered at no charge, but the cost of meeting the requirements would make it economically unreasonable

⁵ Accessibility Act of 2010 § 716(g).

to continue to offer the service at no charge, then meeting the requirements in regard to that feature is not achievable. Similarly, if meeting the requirements would inhibit or, as a practical matter prohibit, the development of new communications technologies, then meeting the requirements in regard to those new communications technologies is not achievable.

No Requirement for Every Feature and Function of Every Device

Section 716(j) of the Accessibility Act of 2010 provides a rule of construction, stating that section 716 “...shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.”⁶ This rule of construction calls for a rule of reason when looking at the requirements of section 716. Rather than requiring every device or service to be accessible for every disability, the rule of construction ensures that people with disabilities have reasonable access to a reasonable number of devices or services within each product line offered by the manufacturer or service provider.⁷

The Public Notice asks whether the requirement adopted in regard to Section 255 of the Act, that manufacturers and service providers must consider each individual product and cannot look generally across product lines,⁸ is consistent with the rule of construction specified in section 716. Vonage submits that it is not. The language of section 716(j) is clear in stating that not every device or service must be accessible for every disability. Therefore, requiring that

⁶ Accessibility Act of 2010 § 716(j).

⁷ See House Committee on Energy and Commerce, Report 111-563, at 24 (Jul 26, 2010) (“House Report”) (“The Committee does not intend to require that every feature and function of every device or service be accessible for every person with any disability.”).

⁸ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-168, Report and Order and Further Notice of Inquiry, 16 FCC Rcd. 6417, ¶ 49 (1999).

each individual device or service be considered rather than looking across product lines would be inconsistent with the rule of construction adopted for section 716.²

Further, it would not be economically efficient to require every service to be accessible for every disability. A good example of why this would be the case is a product that combines non-interconnected VoIP service with a text messaging service. Requiring the non-interconnected VoIP service to support TTY devices would cause the service provider to incur costs to largely duplicate the functionality of text messaging service, which allows communications by text to the message recipient's telephone number, on the voice service.

Conclusion

Vonage Holdings Corporation respectfully requests that the Commission, when enacting regulations to implement Section 716 of the Accessibility Act of 2010, take into consideration (1) the statutory requirement that services and devices subject to section 255 of the Communications Act on the date of enactment of the Accessibility Act of 2010, including interconnected VoIP, are not subject to the requirements of the Accessibility Act of 2010; (2) that the question of whether the cost or effort is reasonable must be taken into consideration when considering whether meeting the requirements are achievable in regard to a particular service or device; and (3) that service providers and manufacturers may look across product lines and need not ensure each and every device or service meets the requirements of the Accessibility Act of 2010.

² See House Report at 26 (stating that in directing the Commission “to consider whether and to what extent the manufacturer or service provider in question has made available a range of accessible products and services with varying functionality and offered at different price points,” “[t]he Committee intends that the Commission interpret this factor in a similar manner to the way it has implemented its hearing aid compatibility rules”).

