

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

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

**NATIONAL ASSOCIATION OF THE DEAF,
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.,
HEARING LOSS ASSOCIATION OF AMERICA,
ASSOCIATION OF LATE-DEAFED ADULTS,
AMERICAN ASSOCIATION OF THE DEAF-BLIND
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK, AND
CALIFORNIA COALITION OF AGENCIES SERVING THE DEAF AND HARD
OF HEARING
REPLY COMMENTS ON ADVANCED COMMUNICATIONS**

The National Association of the Deaf (“NAD”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Hearing Loss Association of America (“HLAA”), Association of Late-Deafened Adults (“ALDA”), American Association of the Deaf-Blind (“AADB”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) (hereinafter “Consumer Groups”) submit these Reply Comments in response to the *Public Notice* issued by the Consumer & Governmental Affairs Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) requesting interested parties to comment on the advanced communications provisions of the Twenty-first Century Communications and Video Accessibility Act of 2010 (“Accessibility Act”).¹

¹ Public Notice, *Consumer & Governmental Affairs Bureau and Wireless Telecommunications Bureau Seeking Comment on Advanced Communications Provisions of the Twenty-first Century Communications and Video Accessibility Act of 2010*, DA 10-2029, CG Docket No. 10-213 (rel. Oct. 21, 2010) (“*Public Notice*”).

Consumer Groups seek to promote equal access to telecommunications, including advanced communications, for the 36 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may enjoy equal opportunities to and the benefits of the telecommunications revolution to which they are entitled.

I. Interoperable Video Conferencing Service

A. Summary of Comments Submitted by Consumer Groups²

In Comments submitted by Consumer Groups on November 22, 2010, we focused on the accessibility of interoperable video conferencing services to individuals who are deaf or hard of hearing, particularly to enable direct access and access through a video relay service (“VRS”). Video conferencing services must enable the individual to see and be seen by all video conference call participants. In addition, the individual must be able to connect to and use VRS (to see and be seen by the VRS communications assistant, and for the VRS communications assistant to hear and be heard by the video conference call participants) to participate equally in the video conference call. Split screen or multi-user video conferencing technology should be used so the individual can see both the participant(s) and the VRS communications assistant at the same time.

Video conferencing capability is not only beneficial to individuals who rely on VRS, but for millions of deaf and hard of hearing people who benefit from visual communication cues such as speech reading, facial expressions, body language, and gestures.

We noted that, currently, VRS users, like users of other video conferencing equipment and/or services can connect with other users of the same equipment and/or services. In other words, video conferencing equipment and service can make and receive direct, “point-to-point”

² Consumer Group Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921747>.

video conferencing calls with users of the same equipment and/or services. As a result, multiple “silos” or “walled gardens” of users are being created.

The North American Numbering Plan (“NANP”) 10-digit telephone number system must be adopted and/or adapted by other video conferencing equipment and service providers to make their systems interoperable with other systems and users, including VRS users.

In addition, video conferencing equipment and services:

- must include market devices and software, as well as specialized devices (videophones) and software used by deaf or hard of hearing people;
- must enable the delivery of two-way voice communications;
- must enable the delivery of voice communications in an accessible format, through the display of real-time captioning; and
- captions, when provided, must be compatible with other technologies that convert text to Braille for access by deaf-blind people.

B. Reply Comments on Interoperable Video Conferencing Service

Comments of the **Consumer Electronics Association** (“CEA Comments”)³ include the following statement:

The Commission must interpret “interoperable video conferencing service” for purposes of the Accessibility Act to apply only to those services that are genuinely interoperable. First, “interoperable” video conferencing services – by nature and by definition – exclude services that are not “interoperable.” VRS equipment is one potential example that might meet the “interoperable” definition given that the Commission already requires such capability. Products that are only capable of communicating with like products from the same manufacturer are not “interoperable” with other manufacturers’ products and are necessarily excluded from the definition. For this reason, most nascent two-way video services and applications commercially available in the marketplace have not yet reached true interoperability and are not covered by the statute. In addition, the service must “enable *users* to share information,” underscoring Congress’s intent that principally

³ CEA Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921293>.

unidirectional communications (*e.g.*, real time web-based seminars or events) not be covered by the Accessibility Act.⁴

Comments of the **Telecommunications Industry Association** (“TIA Comments”)⁵ states, “The definition of interoperable video conferencing service implies a two-way service that is limited to inter-platform, inter-network and inter-provider communications. Most two-way video applications and services are nascent and not yet interoperable.”⁶ Similar comments were filed by the **Voice on the Net Coalition** (“VON Coalition Comments”)⁷ and by the **Information Technology Industry Council** (“ITI Comments”).⁸

Contrary to the assertion by CEA, TIA, the VON Coalition, and ITI, the term “interoperable” does, indeed, apply to the “nascent” two-way video services and applications available today because they are capable of communicating with like products from the same manufacturer. Further, Consumer Groups assert that Congress envisioned the ability of video conferencing services that are capable of communicating with like services and products from other providers and manufacturers, or they would not have included the term “interoperable.” In other words, video conferencing services are expected to be as ubiquitous and as “interoperable” as voice communications and many electronic messaging services are today. The fact that equipment used for VRS is “interoperable” demonstrates that achieving such is desirable, utilitarian, technologically feasible, and achievable.

⁴ *Id.* At 7-8.

⁵ TIA Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921281>.

⁶ *Id.* at iii. *See also id.* at 8-9.

⁷ VON Coalition Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921220>.

⁸ ITI Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921324>.

The scope of the Accessibility Act should not be limited by the type of communication conveyed by the video conferencing service (i.e., uni-, bi-, or multi-directional), but by the fact that the service is *capable* of providing real-time video communications that enable users to share information. For example, video conferencing services may be used to leave a “video mail” (similar to a “voice mail”) message. Just like voice communication that is recorded for later playback, video communications may also be recorded for later playback, such as an automated greeting, away message, or other recorded messages. The fact that the communication service can be used for real-time communication by more than one user should be the determinative factor; not whether it can also be used to convey unidirectional real-time or recorded communication.

In Comments filed by **Sorenson Communications, Inc.** (“Sorenson Comments”),⁹ Sorenson asserts that the Accessibility Act was “intended to cover mass market services and equipment (such as personal computers and smart phones) that have not been designed for use by persons with disabilities, not services and equipment (such as VRS and point-to-point) that have been designed specifically to be accessible to and usable by persons with disabilities.”¹⁰ Sorenson further claims that application of the Accessibility Act, in this instance, would be “counterproductive” and urges the Commission to conclude that equipment designed for point-to-point, VRS, or other telecommunications relay services (“TRS”) is not “interoperable video conferencing service” equipment.

Sorenson seems to interpret the fact that use of the equipment distributed by VRS providers for VRS, which is limited by Commission regulations to use by people with disabilities, defines its characteristics. While the equipment has been specifically designed to

⁹ Sorenson Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921227>.

¹⁰ *Id.* at 2.

connect users to VRS, it also enables the more common use of point-to-point communication. However, the inclusion of a VRS connection function does not mean that the equipment cannot be made available in the general market or used by people without disabilities, too. The limitations with respect to people with disabilities, and in particular to people who are deaf or hard of hearing who use VRS, is a matter of Commission regulation, not limitations on the nature of the equipment or services that companies, who may also be engaged in the delivery of VRS, can make available in the public marketplace.

Consumer Groups assert that VRS equipment and services represent, in fact, a model of interoperable video conferencing services and equipment that are accessible to people who are deaf or hard of hearing; a model Consumer Groups seek to have emulated by other manufacturers and service providers.

To the extent that VRS or other TRS equipment and services are not accessible to individuals with disabilities, they should be made accessible in accordance with the Accessibility Act, if achievable. To their credit, because VRS and other TRS equipment is specifically and specially designed for use by individuals with disabilities, they are more accessible, generally, to individuals with a wide range of disabilities (i.e., easy access to TRS; large buttons; adjustable fonts, sizes, colors; etc.).

Sorenson's attempt to distinguish VRS equipment and services from the definition of interoperable video conferencing services because the definition includes the term "including audio" is unavailing, particularly when Sorenson's VP200, the most widely distributed VRS equipment, includes a setting to turn the microphone on/off. Some VRS equipment and services can and do "include audio" functions, which benefit users who engage in voice carryover ("VCO") and hearing carryover ("HCO") VRS calls and point-to-point calls.

Similarly, Sorenson’s attempt to distinguish VRS equipment and services as designed primarily for purposes other than using advanced communications services, to qualify for an exemption under Section 716(d),¹¹ is unavailing. While VRS equipment and services are designed to provide functionally equivalent telecommunications services under Section 225 for people who are deaf, hard of hearing, deaf-blind, or who have a speech disability, they are also a model of accessible interoperable video conferencing equipment that can be mass marketed.

Comments of **Verizon and Verizon Wireless** (“Verizon Comments”)¹² state:

Interoperable Video Conferencing Service: Congress included these services within the scope of the Accessibility Act “to ensure, in part, that individuals with disabilities are able to access and control these services,” even though these services may in and of themselves be accessibility solutions. These are services that “enable users to share information.” It follows that one-way services, which do not permit information sharing, like webinars, are outside the scope of the definition. Similarly, point-to-point video communications and video relay services are not “video conferencing services,” and they should not be considered “Interoperable Video Conferencing Services.”¹³

It is unclear what “video conferencing services” Verizon would include in the definition, particularly when Verizon seeks to exclude “point-to-point video communications,” which also happens to be an accessibility solution, in addition to access to VRS, another type of accessibility solution. Individuals with disabilities must be able to access and control video conferencing services, regardless of their function as accessibility solutions in and of themselves. In other words, the Accessibility Act is intended to make *all* “interoperable video conferencing” services and equipment accessible.

Consumer Groups concur with the Comments submitted by the **Rehabilitation Engineering Research Center** on Universal Interface and Information Technology Access at

¹¹ Comments that discuss this exemption generally describe and discuss gaming consoles and associated online services as potentially qualifying.

¹² Verizon Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921286>.

¹³ *Id.* at 2-3.

the University of Wisconsin's Trace R&D Center ("RERC Comments").¹⁴ The Commission should make clear that all video conferencing services are covered and that they should be made interoperable. Such video conferencing services must provide point-to-point communication, access to VRS, and (eventually) direct communication with emergency call centers.

Consumer Groups commend the collaborative and forward looking approach proposed in Comments submitted by **Convo Communications, LLC** ("Convo Comments")¹⁵ with respect to achieving interoperable video conferencing services and equipment that enable users – with and without disabilities – to communicate via VRS and point-to-point, regardless of the equipment or service being used. Consumer Groups similarly support Commission efforts, such as through forums or working groups of industry participants, to identify the functions, performance objectives, and standards needed to achieve this goal. Interoperability is an aspect of universal design that will help to eliminate the current state of separate, unequal, and often more expensive equipment and services needed to enable individuals with disabilities to achieve access.

Consumer Groups agree with Comments of **Communication Service for the Deaf** ("CSD Comments")¹⁶ that Internet-enabled devices include equipment used for interoperable video conferencing services when they have built-in webcams or enable add-on webcams. Consumer Groups also agree that such equipment and services should comply with standards, such as requisite resolution and frame-rate, to support real-time video conferencing used for VRS, remote video interpreting, and point-to-point communication. In addition, each of these

¹⁴ RERC Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921354>.

¹⁵ Convo Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921267>.

¹⁶ CSD Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921246>.

Internet enabled devices must include built-in or a dedicated port for alerting devices, such as a visual light flasher.

II. Performance Objectives

Consumer Groups also submitted Comments¹⁷ on performance objectives related to accessibility, usability, and compatibility of advanced communications. We said that performance objectives should be general enough to permit flexibility and innovation, but specific enough with respect to interoperability and the effective outcomes to be achieved.

The Comments submitted by the **Telecommunications Industry Association** (“TIA Comments”)¹⁸ support reasonable, outcome-oriented performance objectives.

Consumer Groups agree with the Comments filed by the **Information Technology Industry Council** (“ITI Comments”)¹⁹ that performance objectives should be defined in a manner similar to the end-user “functional performance” criteria in Section 508 of the Rehabilitation Act., which focus on functionalities to end users. The Accessibility Act provides manufacturers and service providers with significant flexibility to determine how such functionality is achieved. While Consumer Groups also agree that the level of functionality actually achieved depends on what is “achievable,” we disagree that this limitation precludes the establishment of effective performance objectives that may appear “ambitious” or be, at least for some manufacturers or service providers, not yet achievable. Further, Consumer Groups disagree strongly with ITI that performance objectives should be “aspirational.” Performance

¹⁷ Consumer Group Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921747>.

¹⁸ CEA Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921281>.

¹⁹ ITI Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921324>.

objectives must identify the functional characteristics necessary for the product or service to be accessible, they must be testable, and they must be met when achievable.

III. Waivers for Small Entities

Consumer Groups disagree with the Comments of the **Blooston Rural Carriers** (“Blooston Comments”)²⁰ that request an exemption from or streamlined waiver process for the requirements of Section 716 and Section 717 (recordkeeping) for its small rural local exchange carrier (“RLEC”) clients and their affiliates. Blooston claims their small size precludes their ability to influence the design and structure of advanced communications services, equipment, or networks. Instead, these RLECs must adopt the services, features, and protocols of the larger carriers with which they must interconnect. Similarly, we disagree with the Comments of the **National Telecommunications Cooperative Association** (“NTCA”),²¹ representing rural telecommunications providers, which requests exemption of small entities, such as RLECs, from the Accessibility Act.

Individuals with disabilities should not be denied accessible advanced communications equipment and services simply because they happen to live in underserved or rural areas.

Consumer Groups assert that RLECs can ensure their own compliance with the Accessibility Act through contracts with the larger providers and mass market vendors they rely on who must also comply with the Accessibility Act. Furthermore, the Commission should not exempt or waive the requirement of Section 716(d) that imposes a duty on providers of advanced communications services not to install network features, functions, or capabilities that impede accessibility or usability. Consumer Groups also urge the Commission to hold RLECs accountable for their

²⁰ Blooston Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921304>.

²¹ NTCA Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921213>.

reliance on third party applications, services, software, hardware, or equipment to comply with the requirements of the Accessibility Act.

IV. Customized Equipment or Services

Section 716(i) provides an exemption for “customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” Consumer Groups understand that some equipment and services are highly customized to the unique specifications of an enterprise customer, such as requests from businesses that require specialized and sometimes innovate equipment to provide their services efficiently. This exemption should be narrowly applied. We are now in or are entering a period when virtually any or all equipment and services can be customized. As such, this exemption should only apply to extraordinary customization. Furthermore, any such exemption provided does not impact the requesting entity’s obligations under other Federal law, such as the Americans with Disabilities Act of 1990, as amended, and the Rehabilitation Act of 1973, as amended. Because customized equipment and services are expected to be used by covered employers, government entities, and entities doing business with the public, it is in the best interest of such entities to require such customized equipment and services to be accessible when manufactured or provided to ensure compliance with other civil rights law and minimize delays and costs associated with retrofitting.

V. Other Reply Comments

Consumer Groups agree with the Comments filed by **AT&T, Inc.** (“AT&T Comments”):²²

- Compliance with Section 508 Guidelines can be used as evidence of compliance, but the Commission should not adopt the Section 508 Guidelines as a safe harbor.

²² AT&T Comments are available online at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921214>.

- For multi-purpose equipment, the Section 255 “readily achievable” standard should apply to the telecommunications functions that are subject to Section 255, and the Section 716 “achievable” standards should apply to the advanced communications equipment and services that are not otherwise subject to Section 255.
- Compliance with the accessibility mandates for advanced communications equipment and services should be assessed on an individual case-by-case basis.
- Compatibility with existing peripheral equipment or specialized customer premises equipment (“SCPE”) commonly used by persons with disabilities to achieve access should include available mass market equipment.
- Outreach is needed to ensure that the various sectors of the Internet ecosystem, such as application/software developers, operating system developers, and non-common carrier providers of advanced communications services are aware of the obligations of Section 716.

VI. Conclusion

For the reasons described herein, Consumer Groups urge the Commission to take the steps necessary to ensure that *all* Americans have equal access to telecommunications, including advanced communications, regardless of the technology.

Respectfully submitted,

_____/s/_____
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