

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

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

**REPLY COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®**

Michael F. Altschul  
Senior Vice President and General Counsel

Christopher Guttman-McCabe  
Vice President, Regulatory Affairs

Scott Bergmann  
Assistant Vice President, Regulatory Affairs

Matthew B. Gerst  
Counsel, External & State Affairs

**CTIA-The Wireless Association®**  
1400 Sixteenth Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 785-0081

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**TABLE OF CONTENTS**

INTRODUCTION AND SUMMARY .....2

I. THE SCOPE OF THE COMMISSION’S SECTION 716 RULES SHOULD REFLECT THE PURPOSE AND INTENT OF THE ACCESSIBILITY ACT .....3

    A. Commenters Broadly Agree That “Advanced Communication Services” Applies Only To Services Offered To The Public With The Primary Purpose Of Advanced Communications. ....3

    B. There Is Wide Recognition That The Commission Must Avoid Locking Innovative Offerings Into Specific Technologies, Standards Or Requirements. ....5

II. CONGRESS INTENDED SECTION 716 TO BE DISTINCT FROM AND COMPLEMENTARY TO SECTION 255 .....9

    A. Section 716 Augments, Rather Than Supersedes, Section 255. ....10

    B. Section 716’s “Achievable” Standard Differs From The Standards Used In Section 255 And The Americans With Disabilities Act. ....10

    C. Unlike Section 255, The Accessibility Act Establishes A Framework That Prioritizes Industry Flexibility. ....12

III. PROVIDING CLEAR MEANING AND DIRECTION TO THE LIMITED LIABILITY PROVISIONS AND DELINEATING RESPONSIBILITY AMONG ECOSYSTEM PARTICIPANTS ARE CRITICAL STEPS IN IMPLEMENTING THE ACCESSIBILITY ACT .....15

CONCLUSION.....17

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CTIA-The Wireless Association® (“CTIA”)<sup>1/</sup> hereby submits these reply comments in response to the Commission’s *Public Notice* regarding the advanced communications provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “Accessibility Act”), to help provide a record to “assist in the development of the Notice of Proposed Rulemaking” (“NPRM”) required by the Accessibility Act.<sup>2/</sup> As reflected throughout the record, CTIA respectfully submits that the Commission can best implement the Accessibility Act by providing clarity, certainty, and flexibility, to ensure that persons with disabilities have meaningful access to innovative advanced communication services. In particular, and as explained in detail below:

- The Commission in the NPRM should clarify that the scope of covered services are those offered directly to the public with the primary purpose of “advanced communications” and define such services in ways that reflect the innovative wireless ecosystem;
- The Commission in the NPRM should propose to adopt a regulatory framework distinct from and complimentary to Section 255 that prioritizes industry flexibility; and

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<sup>1/</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2/</sup> *Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Public Notice, DA 10-2029 (rel. Oct. 21, 2010) (“*Public Notice*”).

- The Commission in the NPRM should seek to clarify the respective responsibilities of all participants in the communications ecosystem for the accessibility of covered products and services.

## **INTRODUCTION AND SUMMARY**

The initial comment period reveals a common understanding that in creating the Accessibility Act, Congress intended to depart from its prior construct and create a new regime tailored to today's modern communications ecosystem, one characterized by flexibility and constant innovation, and an ability to keep up with changing technology. In all aspects of implementing the Accessibility Act, the Commission must keep this overall intent and purpose in mind.

While Section 255 was enacted in the context of very different services and products, and limited accessibility solutions, Congress intended that the Commission's rules implementing the Accessibility Act reflect today's evolving ecosystem of services, products and solutions. The Commission's rules, guidelines and performance objectives should be outcome-oriented, generally focusing on the required result rather than on how a provider or manufacturer achieves that result. By preserving the greatest possible flexibility in achieving accessibility and providing clear direction about which ecosystem participants are responsible for the accessibility of a covered product or service, the Commission can ensure that persons with disabilities receive the full benefits of the Accessibility Act while encouraging continued investment, innovation and the exploration of new accessibility solutions.

As the Commission moves to the next phase of implementing the Accessibility Act, the Commission should recognize that the characteristics of today's wireless industry are uniquely positioned to empower persons with disabilities. Wireless is an industry characterized, most notably, by choice, diversity and innovation among services, devices, and applications that seem

ready-made to meet the unique needs of individuals with disabilities. CTIA believes that the Accessibility Act establishes a flexible framework to encourage innovation because there are not and will not be any singular approach or solution to make wireless products and services accessible to everyone. Because today's solutions may be tomorrow's outdated technology, the Commission should ensure that the rules adopted under the Accessibility Act are general enough to provide certainty for consumers and industry and flexible enough to permit innovative and novel approaches to accessible wireless solutions. In so doing, the Commission can implement the Accessibility Act so as to best ensure continued innovation and technological progress in making modern communications accessible to all.

**I. THE SCOPE OF THE COMMISSION'S SECTION 716 RULES SHOULD REFLECT THE PURPOSE AND INTENT OF THE ACCESSIBILITY ACT**

**A. Commenters Broadly Agree That "Advanced Communication Services" Applies Only To Services Offered To The Public With The Primary Purpose Of Advanced Communications.**

The comments reveal agreement with CTIA that the Commission should interpret the scope of covered services using a "primary purpose" test.<sup>3/</sup> Under such an approach, a service would only qualify as an "advanced communication service" if it falls within one of the four listed services in the Accessibility Act's definitions and, further, meets two additional criteria.

*First*, the Commission should focus on applying Section 716's obligations to services and equipment with the primary purpose of "advanced communication services." As CTIA and others emphasized in their initial comments, "[s]ervices that fall incidentally within one of the definitions but are not primarily intended to be used for 'advanced communications services' –

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<sup>3/</sup> See Comments of the Entertainment Software Association CG Docket No. 10-23 (filed Nov. 22, 2010) at 3-4 ("ESA Comments"); Microsoft Corp. Comments on the Advanced Communications Provisions of the Twenty-First Century Act, CG Docket No. 10-23 (filed Nov. 22, 2010) ("Microsoft Comments") at 3-5; Comments of the Telecommunications Industry Association, CG Docket No. 10-23 (filed Nov. 22, 2010) at 4-5 ("TIA Comments").

such as electronic messaging services offered as an incidental service within IP-based applications – are not essential to advanced communications and should not be subject to the requirements of the [Accessibility] Act.”<sup>4/</sup> This distinction will be important to ensure that persons with disabilities can access and use those services that are widely used for two-way, interactive advanced communications among the public and to ensure continued innovation among nascent services and equipment. As CTIA suggested in initial comments,<sup>5/</sup> the Commission should seek comment on what qualifies as such a service “primarily” used for advanced communications through the prospective guidelines it is required to issue under Section 716(e)(2) of the Accessibility Act.

*Second*, “advanced communication services” should include only services that are offered directly to end users. As Motorola observes, this interpretation furthers Congress’s intent throughout the Accessibility Act of focusing on consumers.<sup>6/</sup> Thus, suggestions that customized services such as those offered to private businesses or public entities be covered<sup>7/</sup> are expressly outside the scope of the Accessibility Act.

CTIA reminds the Commission that Congress did not intend Section 716(i)’s exemption for customized services and equipment to limit the scope of covered services designed for and used by the members of the general public.<sup>8/</sup> However, there is no support for the argument that

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<sup>4/</sup> Comments of CTIA–The Wireless Association®, CG Docket No. 10-23 (filed Nov. 22, 2010) at 5 (“CTIA Comments”); *see also* ESA Comments at 3-4; Microsoft Comments at 3-5; TIA Comments at 4-5.

<sup>5/</sup> CTIA Comments at 5.

<sup>6/</sup> Comments of Motorola Inc., CG Docket No. 10-23 (filed Nov. 22, 2010) at 4-6 (“Motorola Comments”); *see also* TIA Comments at 4-5.

<sup>7/</sup> *See, e.g.*, Comments of National Association of the Deaf, *et al.*, CG Docket No. 10-23 (filed Nov. 22, 2010) at 3-4 (“NAD Comments”); Comments of Rehabilitation Engineering Research Center on Universal Interface and Information Technology Access at the University of Wisconsin’s Trace R&D Center, CG Docket No. 10-23 (filed Nov. 22, 2010) at 9 (“RERC Comments”).

<sup>8/</sup> 47 U.S.C. § 617(i); H.R. Rep. No. 111-563, at 26 (2010) (“*House Report*”).

Section 716(i) should instead be construed as limited to exempting only the customized “features” of a service or equipment, with any non-customized “feature” remaining subject to the Accessibility Act.<sup>9/</sup> As Congress intended, the Commission’s rules should recognize that the Accessibility Act allows manufacturers or providers to develop completely customized “services or equipment” for a class of users that are outside the scope of the Accessibility Act.

**B. There Is Wide Recognition That The Commission Must Avoid Locking Innovative Offerings Into Specific Technologies, Standards Or Requirements.**

The initial comments also show broad recognition that the Commission’s rules, definitions, performance objectives, and prospective guidelines should refrain from selecting specific technologies, standards or requirements, to avoid discouraging the introduction of innovative products and services.<sup>10/</sup> In recognizing this limitation, the Commission can ensure that any rules, objectives and guidelines are consistent with the Accessibility Act’s strong emphasis on preserving the greatest possible flexibility for manufacturers and providers in achieving the required accessibility.

With regard to any interpretation of the Accessibility Act’s definitions, as CTIA emphasized in its initial comments, and others echoed, it is critical that all interested parties understand what services are covered by the definitions, so that covered entities can ensure that they are in compliance with the Accessibility Act, and avoid disputes over whether other services are subject to the Accessibility Act.<sup>11/</sup> Further, in order to preserve flexibility, the Commission’s

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<sup>9/</sup> RERC Comments at 8.

<sup>10/</sup> See Comments of T-Mobile USA, Inc., CG Docket No. 10-23 (filed Nov. 22, 2010) at 6 (encouraging adoption of general, outcome-based performance objectives) (“T-Mobile Comments”); Microsoft Comments at 9-11; Comments of the Consumer Electronics Association, CG Docket No. 10-23 (filed Nov. 22, 2010) at 13 (“CEA Comments”); TIA Comments at 18.

<sup>11/</sup> CTIA Comments at 4; Comments of Vonage Holdings Corporation, CG Docket No. 10-23 (filed Nov. 22, 2010) at 3.

rules should focus on defining the general functionality of a covered service. For example, while some comments suggest specific definitions of “electronic messaging services,”<sup>12/</sup> the Commission should focus on the general functionality of “electronic messaging” services to be consistent with the overall flexible approach of the Accessibility Act. As noted above, setting specific standards within the Accessibility Act’s definitions will lead to an inflexible approach that restricts the ability to offer innovative services.

Regarding the scope of “interoperable video conferencing” services, the record clearly demonstrates that there is no consensus on what services or equipment should be covered by the term, even within the accessibility community.<sup>13/</sup> This uncertainty appears to stem from the fact that these services are extremely nascent. As the VON Coalition notes, two-way video applications have barely emerged in the market and are generally not yet fully interoperable.<sup>14/</sup> Therefore, CTIA recommends that the Commission defer any further explication or enforcement of Section 716’s “interoperable video conferencing” provisions until such services are better understood by the interested stakeholders, including the accessibility community, industry and the Commission.

In the current environment, it would be impracticable for the Commission to adopt any specific definition of what a service must offer to be an “interoperable video conferencing service.” Any such attempt to determine which business models are appropriate would

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<sup>12/</sup> See, e.g., RERC Comments at 3 (defining “real-time” electronic messaging as requiring “the transmission of text within 1 second or less from the time the characters are created.”).

<sup>13/</sup> Compare, e.g., Comments of Communication Service For The Deaf, Inc., CG Docket No. 10-23 (filed Nov. 22, 2010) at 2 (VRS equipment should be covered by definition) (“CSD Comments”) with Comments of Sorenson Communications, Inc., CG Docket No. 10-23 (filed Nov. 22, 2010) at 2-4 (any VRS equipment is not equipment used for “interoperable video conferencing service”) (“Sorenson Comments”).

<sup>14/</sup> Comments of Voice on the Net Coalition, CG Docket No. 10-23 (filed Nov. 22, 2010) at 11 (“VON Coalition Comments”).

inevitably favor some market participants over others. In the wireless ecosystem, in particular, it is simply too early to dictate how this market should develop. Requiring providers to offer the service in a particular way may lock them into business arrangements that prevent them from responding to customers' changing needs, technological advances, or marketplace realities. Indeed, Convo describes the stifling effects on innovation in the Telecommunications Relay Service ("TRS") market that have resulted from providers locking themselves too early into a particular technological approach.<sup>15</sup> Convo voices concerns that requiring a particular approach, *e.g.*, a specific means of compatibility between Video Relay Service ("VRS") providers, would be premature and defeat marketplace innovation.<sup>16/</sup>

If the Commission does offer any explication of the definition of "interoperable video conferencing service," however, it must be based in and adhere to the language of the Accessibility Act. Some commenters seek an extraordinarily broad definition of the term, which in some cases conflicts directly with the Accessibility Act's plain language. For example, defining "interoperable video conferencing services" to include any "Internet-enabled device," as suggested by Communication Service For The Deaf,<sup>17/</sup> is far broader than Congress contemplated and pays no heed to the Accessibility Act's definition. Similarly, the Rehabilitation Engineering Research Center's suggestion<sup>18/</sup> that the Commission interpret "interoperable video conferencing service" to include those that are not interoperable (and

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<sup>15</sup> Comments of Convo Communications, LLC, CG Docket No. 10-23 (filed Nov. 22, 2010) at 6 ("Convo Comments").

<sup>16/</sup> *Id.* at 4.

<sup>17/</sup> CSD Comments at 1. For the reasons discussed above, CSD's suggestion (at 2) that the FCC impose very specific requirements on all Internet-enabled devices, including a requirement that all be able to support real-time video conferencing and that it meet specified video standards would conflict with the Accessibility Act's language, purpose and intent.

<sup>18/</sup> RERC Comments at 2-3.

indeed, to read such language as imposing a requirement that all video conferencing become interoperable) conflicts with the plain language of the Accessibility Act.<sup>19/</sup> Moreover, as Information Technology Industry Council (“ITIC”) observes,<sup>20/</sup> earlier versions of the legislation confirm that Congress considered and rejected including all video conferencing services, choosing instead to limit the scope to “interoperable” video conferencing services.

National Association of the Deaf similarly asks the Commission to impose a broad array of requirements and standards as part of the definition of this service.<sup>21/</sup> Imposing such specific and extensive requirements at this stage of the introduction of video conferencing services to the wireless market carries the risk that these services will not properly emerge in the marketplace, to the detriment of all consumers, including the accessibility community. To avoid this result, CTIA recommends that the Commission engage all stakeholders in a dialogue about the appropriate regulatory scope of “interoperable video conferencing services” and defer any further explication or enforcement of Section 716’s “interoperable video conferencing” provisions.

With regard to the performance objectives and prospective guidelines, there was strong consensus among manufacturers, providers and the accessibility community that the Commission should focus on the general outcome to be achieved, and refrain from dictating any particular technology or standard for how to achieve that outcome.<sup>22/</sup> AAPD and the National Association

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<sup>19/</sup> See Comments of Verizon and Verizon Wireless, CG Docket No. 10-23 (filed Nov. 22, 2010) at 3 (noting that since “interoperable” services enable users to share information, it “follows that one-way services, which do not permit information sharing . . . are outside the scope of the definition.”) (“*Verizon/Verizon Wireless Comments*”); VON Coalition Comments at 11 (same).

<sup>20/</sup> Comments of Information Technology Industry Council, CG Docket No. 10-23 (filed Nov. 22, 2010) at 3-4 (“*ITIC Comments*”).

<sup>21/</sup> NAD Comments at 3-5.

<sup>22/</sup> See T-Mobile Comments at 6; ITIC Comments at 9 (same); Microsoft Comments at 9-11 (same).

of the Deaf state that performance objectives should specify the outcomes to be achieved but be “general enough to permit flexibility and innovation.”<sup>23/</sup> Convo emphasizes that the Commission should not establish specific performance objectives, but rather look to measure “real world achievements.”<sup>24/</sup>

In contrast, RERC’s argument that performance objectives must be “quite specific in order to . . . provide consistency and predictability”<sup>25/</sup> demonstrates the danger inherent in establishing specific objectives. Creating “consistent” and “predictable” objectives means locking offerings into a particular approach favored at a particular moment in time, even if a better, more efficient or more effective solution emerges. As Convo describes, such an approach disfavors progress and the emergence and adoption of new, potentially better solutions.<sup>26/</sup>

RERC’s suggestion that the Commission create prospective guidelines based on outcomes that must be achieved, while permitting flexible approaches to that outcome, is much more likely to result in innovation and progress within the industry, and this approach should be followed in all aspects of the Accessibility Act’s implementation.<sup>27/</sup>

## **II. CONGRESS INTENDED SECTION 716 TO BE DISTINCT FROM AND COMPLEMENTARY TO SECTION 255**

Congress deliberately created a new standard for “advanced communications” that departs from the approach used in Section 255 in significant ways. The Commission should effectuate this intent by implementing and applying the “achievable” and “industry flexibility”

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<sup>23/</sup> Comments of American Association of People with Disabilities, CG Docket No. 10-23 (filed Nov. 30, 2010) at 5 (“AAPD Comments”); NAD Comments at 5.

<sup>24/</sup> Convo Comments at 9.

<sup>25/</sup> RERC Comments at 6.

<sup>26/</sup> Convo Comments at 4.

<sup>27/</sup> RERC Comments at 7.

provisions of Section 716 in the manner directed by the Accessibility Act, rather than by relying on any approaches it used when implementing the wholly different Section 255.

**A. Section 716 Augments, Rather Than Supersedes, Section 255.**

As CTIA and many commenters noted,<sup>28/</sup> the Commission’s rules should be consistent with the language and intent of Section 716(f) to retain Section 255’s application to equipment and services used to provide telecommunications services and interconnected VoIP. As AT&T explains, “Section 716 and Section 255 are mutually exclusive.”<sup>29/</sup> Otherwise, regulations would be potentially duplicative or contradicting, causing provider and manufacturer confusion and potentially having the unwanted effect of incenting manufacturers and providers not to add new features or capabilities to existing products and services for fear of triggering new and additional regulation.

**B. Section 716’s “Achievable” Standard Differs From The Standards Used In Section 255 And The Americans With Disabilities Act.**

As CTIA and other commenters have suggested, the Commission should interpret “achievable” to require an analysis of whether accessibility is “reasonable,” a standard that is more than that which is “easy” but less than a “fundamental alteration” to the specific product or service.<sup>30/</sup> In interpreting and applying this standard, the Commission should not look for guidance to either the standards used in Section 255 or the Americans with Disabilities Act (“ADA”).<sup>31</sup>

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<sup>28/</sup> See, e.g., Comments of AT&T, Inc., CG Docket No. 10-23 (filed Nov. 22, 2010) at 3 (“AT&T Comments”); Motorola Comments at 9.

<sup>29/</sup> AT&T Comments at 3; see also Motorola Comments at 4-6.

<sup>30/</sup> TIA Comments at 9-11; CEA Comments at 8-11.

<sup>31</sup> American with Disabilities Act, 42 U.S.C. 12101 *et seq.*

Section 716’s “achievable” standard is clearly distinct from Section 255’s “readily achievable” standard. Congress specifically did not incorporate the advanced communications provisions into Section 255. Instead, Congress adopted a new framework to reflect today’s innovative ecosystem of “advanced communications” services and products, which operates in different markets and carries different consumer expectations than the “telecommunications services” available during Section 255’s implementation. By retaining the Section 255 framework for telecommunications services and equipment, Congress emphasized that Sections 255 and 716 must be read independently and applied differently to the different services. Suggestions that the performance standards of 716 be “harmonized as much as possible” to the requirements of Section 255<sup>32/</sup> do not reflect Congress’s expressed intent. As T-Mobile observes, “the ‘industry flexibility’ provisions reflect Congress’s clear judgment that Section 716 should reflect a substantial departure from Section 255’s traditional accessibility-compatibility framework.”<sup>33/</sup>

Similarly, Congress specifically rejected imposition of the ADA’s “undue burden” standard after extensive consideration and amended the Accessibility Act’s language through the legislative process to reflect this intent. Implementation of the Accessibility Act should not be used as an opportunity to reopen this settled issue. In particular, the argument that the “unreasonable impact” analysis under the “achievable” standard should be read to mean “undue hardship” as it is under the ADA<sup>34/</sup> has no support in the Accessibility Act or Congress’s expressed intent. If Congress had intended for the Section 716 standard to be interpreted in the

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<sup>32/</sup> RERC Comments at 7.

<sup>33/</sup> T-Mobile Comments at 4; *see also* ITIC Comments at 6; Microsoft Comments at 10 (observing that Congress’s approach in Section 716 is “quite different from the product-specific accessibility approach taken by the Commission in Section 255 and reflects the very different marketplace in which advanced communications services are offered.”).

<sup>34/</sup> RERC Comments at 4.

same way as the ADA’s “structurally impracticable” standard, it would have so specified and explicitly directed the Commission to look to the ADA to interpret the standard. It did not.<sup>35/</sup>

Therefore, Section 716’s “achievable” standard must be read entirely on its own.

**C. Unlike Section 255, The Accessibility Act Establishes A Framework That Prioritizes Industry Flexibility.**

Importantly, the Commission’s rules should reflect Section 716’s departure from Section 255’s framework by granting covered entities substantially more flexibility to choose the method of compliance under the Accessibility Act. This flexibility is evidenced through provisions offering covered entities significant discretion to make their products and services accessible, including offering manufacturers and providers the option of using third party solutions and allowing choices in how to make products and services “compatible” with existing solutions when accessibility is not achievable.

*First*, Section 716’s flexible framework allows covered entities to offer a wide variety of products and services with accessible solutions. The factors in Section 716(g) reflect Congress’s intent that “achievable” be an analysis based on the range of accessible solutions offered by a covered entity. Separately, Section 716(j) reflects an affirmative intent that accessibility be spread across a general product line, rather than apply to each specific product or service.<sup>36/</sup> Thus, the suggestion that Section 716(j) is merely a repeat of the “achievability” standard<sup>37/</sup> is contrary to Congress’s expressed intent in enacting Sections 716(g) and (j).

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<sup>35/</sup> Notably, RERC argues that Section 716’s standard must impose a higher burden than Section 255’s standard, because if Congress had meant it to be the same, it would have used that language, but then simultaneously argues that Section 716’s standard should be interpreted with reference to the ADA standard. RERC Comments at 3. By RERC’s own logic, this is incorrect.

<sup>36/</sup> See VON Coalition Comments at 15.

<sup>37/</sup> RERC Comments at 8.

*Second*, while Section 255 prioritized “built-in” solutions to achieve accessibility, Congress in the Accessibility Act recognized the significant potential of innovative “third party” solutions to meet the needs of persons with disabilities. Section 716 explicitly allows covered entities to equally choose among “built-in” or “third party solutions” to satisfy the Accessibility Act.<sup>38/</sup> Suggestions that the Commission’s regulations allow use of third party solutions only when built-in accessibility is not achievable<sup>39/</sup> are directly contrary to the plain language of the Accessibility Act and Congress’s intent to allow complete discretion in the choice between built-in and third party solutions.<sup>40/</sup> Indeed, some makers of such solutions note concerns that locking covered services or equipment into standard approaches or requiring specific criteria could stifle their attempts to offer innovative products.<sup>41/</sup>

In complying with the Accessibility Act by offering third party solutions at a “nominal cost,” many commenters suggested that the definition of “nominal” must be viewed on a case-by-case basis rather than pursuant to a set formula or rate.<sup>42</sup> As the House Report notes, Congress intended that “nominal cost” should not be read to force covered entities to incorporate

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<sup>38/</sup> See T-Mobile Comments at 4; Verizon/Verizon Wireless Comments at 4 (“The Commission should encourage providers and manufacturers to use third-party applications where appropriate, and the Commission should adopt flexible policies that do not restrict manufacturers’ and providers’ ability to do so”); ITIC Comments at 7; Microsoft Comments at 10.

<sup>39/</sup> RERC Comments at 4; *see also* AAPD Comments at 4 (stating that not building in accessibility “is the least desirable model for achieving accessibility”), but *see id.* at 5 (noting that “The field of advanced communications is rapidly changing and we believe that much accessibility and usability will be accomplished through software.”).

<sup>40/</sup> *House Report* at 24 (“The Committee intends that these provisions provide that the choice of whether to build in accessibility or provide access to a third-party solution that is available at a nominal cost rests solely with the provider or the manufacturer.”).

<sup>41/</sup> See Convo Comments at 5-6 (noting that once providers and manufacturers have invested in specific required equipment, it is extremely hard to move off that approach, even if better ideas emerge in the market that are “clearly superior or more efficient”).

<sup>42</sup> See Motorola Comments at 8; T-Mobile Comments at 5; CEA Comments at 12; TIA Comments at 15; VON Comments at 16.

or subsidize the cost of third party accessibility solutions.<sup>43/</sup> In addition, the “cost” of accessibility solutions may vary significantly based on a number of factors, including the degree of accessibility required.<sup>44/</sup> While some commenters called for specificity in defining “nominal cost,”<sup>45/</sup> it is clear that Congress did not intend that the Commission define “nominal cost” as a specific rate, percentage or formula.<sup>46/</sup> Thus, CTIA believes the Commission should not adopt a specific definition and, instead, allow “nominal cost” to be determined on a case-by-case basis.

*Third*, the Commission’s rules regarding Section 716(c) should address the general requirement that covered entities should make their product or service “compatible” with existing peripheral devices or specialized customer premises equipment.<sup>47/</sup> The Commission’s rules regarding such “compatibility” must be designed to leave the manufacturer or provider the same flexibility that characterizes the other provisions of the Accessibility Act. In implementing the Accessibility Act, the Commission should avoid mandating the incorporation of compatibility with specific products or services.<sup>48/</sup> Many products already contain the features

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<sup>43/</sup> *House Report* at 24.

<sup>44/</sup> Motorola Comments at 8 (noting that “[a] one-size-fits-all definition of nominal costs is inappropriate in light of the wide breadth of disabilities and accessibility solutions.”).

<sup>45/</sup> *See, e.g.*, AAPD Comments at 3; RERC Comments at 5.

<sup>46/</sup> *See, e.g.*, Convo Comments at 5; VON Coalition Comments at 16; Microsoft Comments at 13-14 (noting that “[a]n overly restrictive definition of ‘nominal’ might also discourage manufacturers and service providers . . . from large-scale investment for fear of developing solutions that have a greater than ‘nominal’ cost”).

<sup>47/</sup> 47 U.S.C. § 617(c).

<sup>48/</sup> Notably, the Accessibility Act explicitly prohibits the Commission from adopting rules that mandate the use or incorporation of proprietary technology. 47 U.S.C. § 153. Furthermore, the House Report clearly states that the inclusion of a feature that results in a “fundamental alteration” of a service or product “is *per se* not achievable.” *House Report* at 24.

suggested in the record (*e.g.*, flashing lights or vibrating alerts) and others, such as mandating a “dedicated port,”<sup>49/</sup> would limit innovative solutions to compatibility.

### **III. PROVIDING CLEAR MEANING AND DIRECTION TO THE LIMITED LIABILITY PROVISIONS AND DELINEATING RESPONSIBILITY AMONG ECOSYSTEM PARTICIPANTS ARE CRITICAL STEPS IN IMPLEMENTING THE ACCESSIBILITY ACT**

As required by the Accessibility Act, the Commission’s rules should establish a stable and predictable regulatory regime that ensures covered entities are not responsible for the advanced communications services over which they have no or limited authority. The record reflects agreement with CTIA that establishing the extent of manufacturers’ and service providers’ responsibility for ensuring compliance with the Accessibility Act is a fundamental element of implementation.<sup>50/</sup> As T-Mobile observes, “innovation . . . may become stifled if wireless service providers were required to police new third party applications for noncompliance with accessibility requirements.”<sup>51/</sup> Thus, Section 2 of the Accessibility Act ensures that the Commission’s rules continue promoting the investment and innovation that has characterized the wireless industry’s efforts to serve persons with disabilities.

In addition, the Commission should explicitly clarify that the “reliance on” third party solutions exemption applies only to those third party solutions that are offered in direct connection with the covered services or products, in order for that covered entity to achieve the product or service’s accessibility. A covered entity should not be deemed to have “relied on” a third party solution by merely listing, advertising or suggesting the availability and use of a third party solution to their customers.

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<sup>49/</sup> CSD Comments at 2.

<sup>50/</sup> TIA Comments at 23-24; CEA Comments at 19-20.

<sup>51/</sup> T-Mobile Comments at 8.

Commenters also agreed with CTIA that it is very important that the Commission provide certainty regarding the scope of responsibility of each participant in the ecosystem.<sup>52/</sup> As part of that effort, commenters emphasize that any rules addressing network features or functions must recognize the need for covered entities to manage all network traffic, including advanced communications services,<sup>53/</sup> and that the only way to ensure the delivery of “information content” is for the FCC to permit industry-recognized standards to satisfy the requirements of Section 716.<sup>54/</sup>

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<sup>52/</sup> See, e.g., Motorola Comments at 6.

<sup>53/</sup> See, e.g., T-Mobile Comments at 5 (noting importance of promoting network security, reliability and survivability).

<sup>54/</sup> See, e.g., CEA Comments at 14-15. RERC’s comments highlight why such standards are urgently needed. RERC argues that the FCC should prohibit not only “affirmative actions” that impede accessibility, but also “passive inaction” that impedes access. RERC Comments at 5. Yet, covered entities cannot know what types of actions are impeding access if they do not have an ability to identify the accessibility. See CTIA Comments at 14-15.

## CONCLUSION

For the above reasons and those discussed in CTIA's initial comments, CTIA believes that the Commission should strive in the forthcoming NPRM implementing the Accessibility Act to promote and preserve the greatest possible clarity, certainty, and flexibility, while ensuring that the forthcoming rules meet the goals of the Accessibility Act to increase the access of persons with disabilities to modern communications.

Respectfully Submitted,

/s/ Matthew B. Gerst

Michael F. Altschul  
Senior Vice President and General Counsel

Christopher Guttman-McCabe  
Vice President, Regulatory Affairs

Scott Bergmann  
Assistant Vice President, Regulatory Affairs

Matthew B. Gerst  
Counsel, External & State Affairs

**CTIA-The Wireless Association®**  
1400 Sixteenth Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 785-0081

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