

**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 AT&T**

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## EXECUTIVE SUMMARY

AT&T has a commitment to serving all of our customers, including customers with disabilities. This runs to the very core of our corporate culture. As such, AT&T shares the goal of the CVAA and the Commission to ensure that persons with disabilities are able to utilize fully advanced communications services, equipment, and networks. However, in implementing the CVAA, the Commission should take care to preserve sufficient flexibility to support continued innovation. A focus on innovation and flexibility runs throughout the text of the CVAA, and this same approach should inform the Commission's implementation of its provisions. AT&T's comments respectfully suggest several ways in which the Commission can be sure to strike the appropriate balance.

Among the suggestions made by AT&T below:

- In recognition that the CVAA was intended to extend disability access protections, rather than replace existing protections, the Commission should narrowly construe its statutory definitions and clearly articulate the limits of the new rules.
- The CVAA's waiver process, including an opportunity to seek a waiver for an entire class of services or devices, is essential to ensure that the newly adopted rules do not create unreasonable burdens that would discourage innovation. Clearly, the intent of the CVAA is to extend the benefits of innovation to people with disabilities by encouraging accessible design when achievable and not to delay the introduction of new technologies that may not have known accessibility standards or solutions.
- To protect important pro-consumer trends in the advanced communications services marketplace, the Commission must ensure that its new rules do not impose liability on service providers or manufacturers for applications, devices, or services provided by third parties, except where the manufacturer or service provider endorses use of the third party solution as a means to meet the accessibility requirements of the CVAA.
- In determining whether an accessibility feature is achievable for a certain device or service, the Commission's analysis must be broad and fact-based, including an examination of the entire line of products or services offered by the service provider or manufacturer.
- When considering whether the cost of a third party accessibility solution is "nominal" to the consumer, the Commission's analysis should focus on the consumer's

perception of the cost at the time of making the purchasing decision. This analysis should allow for creative means for service providers and manufacturers to subsidize the costs of these accessibility solutions.

- Finally, the Commission's implementation of the Section 717 recordkeeping and complaint procedures must be results-oriented and should take advantage of existing industry and administrative processes where appropriate. In particular, the Commission should streamline the unreasonably burdensome "informal" complaint procedures. Additionally, it should review the proposed formal complaint procedures and reject provisions that clearly conflict with the provisions of the CVAA.

By adopting the revisions to its proposed rules suggested herein, and by emphasizing the preservation of sufficient industry flexibility, AT&T is confident that the Commission can craft rules that achieve the important goals of the CVAA while laying the groundwork for continued innovation in advanced communications services.

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**COMMENTS OF AT&T**

AT&T Services, Inc. (“AT&T”), on behalf of its subsidiaries, hereby submits the following comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“Notice”) on implementing the advanced communications services provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).<sup>1</sup>

**I. INTRODUCTION**

AT&T prides itself on its commitment to providing accessible communications, information, and entertainment services of the highest quality to all of our subscribers. AT&T works closely with vendors in our product lines to bring accessible user devices to market at a

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<sup>1</sup> See 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 Nos. 10-213, 10-145, WT Docket No. 96-198, *Notice of Proposed Rulemaking*, 26 FCC Rcd 3133 (2011).

reasonable price. AT&T makes available a wide variety of wireless handsets that are TTY-compatible and comply with the Commission's hearing aid compatibility ("HAC") rules.<sup>2</sup> AT&T also has established its National Call Center for Customers with Disabilities (for mobile customers) and the AT&T Sales and Service Centers for Disability and Aging (for landline customers), where specialized customer service representatives can arrange for bills in an alternate format, such as Braille or large print, respond to questions regarding AT&T's accessibility programs, or help customers find the equipment, accessories, features, and service plans that best fit their needs.<sup>3</sup> AT&T supports TTY capabilities in home telephone services and operates as a provider of other telecommunications relay services in multiple states. AT&T also provides closed captioning support on U-Verse home video service. AT&T is proud to work with prominent disability organizations, such as the World Institute on Disability, the Hearing Loss Association of America and the American Foundation for the Blind to support and promote more accessible communications. Through these important connections, AT&T has been able to distinguish itself as a leader in communication access.

AT&T shares the goal of the CVAA and the Commission to ensure that persons with disabilities are able to utilize fully advanced communications services, equipment, and networks. However, in implementing the CVAA, the Commission should take care to preserve sufficient flexibility to support continued innovation. An overly broad regulatory obligation could prevent new products from being brought to market, out of concerns regarding compliance costs. A

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<sup>2</sup> See AT&T, "TTY-Compatible Phones" <http://www.wireless.att.com/learn/articles-resources/disability-resources/tty.jsp> (last visited Apr. 13, 2011); AT&T "Hearing Aid Compatibility" <http://www.wireless.att.com/learn/articles-resources/disability-resources/hearing-aid-compatibility.jsp> (last visited Apr. 13, 2011).

<sup>3</sup> See AT&T, "National Center for Customers with Disabilities" <http://www.wireless.att.com/learn/articles-resources/disability-resources/nccd.jsp> (last visited Apr. 25, 2011); AT&T, "AT&T Accessibility & Universal Design" <http://www.att.com/gen/corporate-citizenship?pid=17917> (last visited Apr. 25, 2011).

concern for the needs of innovators is expressed both in the Commission's *de minimis* rule in the HAC context<sup>4</sup> and in the "Industry flexibility" and "Commission flexibility" provisions of the CVAA.<sup>5</sup> The Commission should attempt to strike this same balance as it considers the adoption of rules to implement various provisions of the CVAA.

Relatedly, any new requirements adopted pursuant to the CVAA should be entirely forward-looking and any products already developed and deployed should be grandfathered from compliance. Requiring service providers and manufacturers to retrofit devices and equipment that are already in the field would be more than just prohibitively expensive, it may be logistically and technologically impossible. The industry's resources would be better directed toward developing technological solutions to ensure that persons with disabilities can unleash the full potential of future generations of advanced communications services, devices, and networks.

In the comments below, AT&T respectfully offers suggestions to the Commission on how best to interpret and apply the CVAA in a way that ensures that persons with disabilities will have access to a wide range of advanced communications services while also maintaining a business and regulatory environment that is favorable to the continued development and introduction of advanced communications services and equipment.

## **II. THE STATUTORY DEFINITIONS OF THE CVAA SHOULD BE NARROWLY CONSTRUED.**

The range of devices and services to which the CVAA applies should be narrowly construed, consistent with the purpose of the statute. As the Commission recognized in the Notice, the CVAA was prompted by developments in the communications industry since the

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<sup>4</sup> See 47 C.F.R. § 20.19(e).

<sup>5</sup> See 47 U.S.C. §§ 617(a)(2), (b)(2), (h).

adoption of the disability access protections of Section 255,<sup>6</sup> and a desire to ensure that all Americans can “share[] in the benefits of this rapid technological advancement.”<sup>7</sup> Thus, the Commission should keep in mind that the CVAA in general, and Section 716 in particular, was not intended to replace or supersede the existing Section 255 disability access provisions,<sup>8</sup> as the CVAA was not motivated by a perception that Section 255 provided insufficient accessibility protections with respect to the services to which that Section applied. Rather, Congress intended to expand the scope of the Commission’s accessibility requirements to embrace specific types of new IP-based services not otherwise covered by Section 255.

The Commission should adopt this same approach in interpreting the CVAA. To the extent that a device is capable both of supporting common carrier services subject to Section 255 and advanced communications services subject to Section 716, the manufacturer and service provider obligations should be determined with respect to the relevant service. It is not necessary to upset the processes and precedent that have been developed over the years by extending the new provisions to devices and services for which accessibility is already provided under Section 255. Thus, Section 716 and the other CVAA obligations should not apply to devices and services that are already subject to Section 255 unless expressly indicated in the CVAA. Only those services or devices—or aspects of services or devices—that fit within the limited definitions of the CVAA and were not previously covered by Section 255 should be subject to the new Section 716 requirements.

The Commission should adhere similarly to all of the narrow statutory definitions related

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<sup>6</sup> See 47 U.S.C. § 255.

<sup>7</sup> Notice, 26 FCC Rcd at 3135 ¶ 2 (citing S. Rep. No. 111-386 at 5 (2010) (“Senate Report”); H.R. Rep. No. 111-563 at 19 (2010) (“House Report”)).

<sup>8</sup> See 47 U.S.C. § 255.

to the scope of coverage of the CVAA and should resist any calls to interpret the statute overly expansively. The Commission should offer clear guidance on which services and equipment are covered, so as to provide additional certainty to the industry regarding compliance obligations. For example, it seems clear that the CVAA’s definition of electronic messaging services excludes machine-to-machine communications because these are not messages sent “between individuals” over communications networks.<sup>9</sup> The Commission should state explicitly that this is the case, and should also clarify the limits of the other new statutory definitions.

### **III. THE COMMISSION SHOULD USE THE CVAA WAIVER PROCESS TO NURTURE AND PROTECT INNOVATION.**

The Commission should reject calls to eviscerate the CVAA’s waiver provisions and instead develop a waiver process that provides real protection for innovative products and services. Congress wisely empowered the Commission to grant waivers of the Section 716 rules for equipment, services, or classes of equipment or services that, while capable of accessing advanced communications services, are designed primarily for purposes other than advanced communications.<sup>10</sup> This Commission flexibility will be essential to ensuring that implementation of the advanced communications services rules is not unreasonably burdensome on the providers of innovative services and offerings, and the Commission should apply it in a way that reflects its fundamentally pro-innovation intent.

#### **A. The Commission Should Grant Waivers to Support the Development of Innovative Classes of Devices and Services.**

The Commission asks in the Notice whether it should “consider waivers for a ‘class’ of service or equipment under this section and what specific showing is needed to justify such

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<sup>9</sup> See 47 U.S.C. § 153(56) (stating that the term “‘electronic messaging service’ means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.”).

<sup>10</sup> See 47 U.S.C. § 617(h).

waivers.”<sup>11</sup> AT&T respectfully submits that this question is answered by the statutory language, which specifically contemplates that the Commission would consider waivers for any class of equipment or services that meets the statutory requirement with respect to its design.<sup>12</sup>

Moreover, class waivers, when properly limited in scope and duration, could provide strong protection for innovation and quick introduction of products to the market while ensuring that accessibility is addressed in the developmental process. When a new class of devices is brought to market, or when a new or unexpected functionality for an existing class of devices emerges, the Commission should be prepared to allow for a period of development, to understand the implications and most effective means for addressing accessibility, which may include the need for standards development, before applying the Section 716 accessibility requirements. While AT&T shares the Commission’s belief that accessibility considerations should be incorporated at the earliest stages of product development, this is occasionally infeasible, for example, when the final applications of a device or service are not well understood at the outset, or where financial, intellectual, or temporal resources are constrained. Class-based waivers are also necessary to prevent the irrational result of potentially requiring an accessibility solution for a product or service that is ancillary to another product or service for which accessibility is unachievable—such as a customer support service for an inherently inaccessible product or service.

The grant or denial of a class waiver notwithstanding, service provider and equipment manufacturers should always have the option of applying for an individual waiver and having their petition considered on a case-by-case basis. While the CVAA contemplates the submission—and implicitly, the potential denial—of class-based waivers, it does not

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<sup>11</sup> Notice, 26 FCC Rcd at 3155 ¶ 59.

<sup>12</sup> See 47 U.S.C. § 617(h)(1).

contemplate a ruling that an entire class of equipment is ineligible for a waiver. So, even if the Commission determines not to grant a class waiver to, for example, all video game consoles, it should consider individual waiver petitions by video game console manufacturers on a case-by-case basis.

**B. The Waiver Analysis Should Focus on the Primary Intended Use of the Service or Equipment.**

The CVAA empowers the Commission to grant waivers for multiple use equipment or services that are “designed primarily for purposes other than using advanced communications services.”<sup>13</sup> The Commission should not apply undue constraints to this waiver analysis. A plain reading of the statutory language makes clear that a waiver may be granted when advanced communications services is one of many *intended* uses of the device or service, and such use is merely secondary or tertiary. Interpreting this language in a manner that excludes from a potential waiver any device or service capable of use in advanced communications services would render the word “primarily” meaningless. Instead, the Commission’s waiver analysis must involve an examination of all of the intended uses of the equipment or service, which in turn will require consideration of the development process for, the marketing of, and public perceptions about the equipment or service. Based upon that information, the Commission could consider the potential waiver of the device or service, even if the provision of advanced communications services is an intended use.

**C. Waivers Should Be Promptly Considered.**

The Commission’s flexibility to grant waiver petitions provides a means to get innovative products and services to market in situations where Section 716 compliance would be unnecessary or overly burdensome. Time is often of the essence in these cases. While AT&T

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<sup>13</sup> 47 U.S.C. § 617(h)(1)(B).

recognizes that the Commission had decided not to adopt the recommendation of TIA to incorporate an automatic grant date for waiver requests, the Commission should still consider applying a shot clock to waiver requests. AT&T recommends that the Commission establish rules requiring a ruling on waiver requests within 90 days of filing. A 90 day commitment will appropriately balance commercial demands with the need for the Commission to have sufficient time to fully review waiver requests.

**IV. THE COMMISSION MUST ENSURE THAT IT DOES NOT IMPOSE POTENTIAL THIRD PARTY LIABILITY ON SERVICE PROVIDERS OR MANUFACTURERS.**

In implementing Section 716, the responsibilities that the Commission imposes on service providers and manufacturers should pertain only to the services and applications those service providers and manufacturers provide to consumers and not to third party software and equipment. The advanced communications services market is characterized by increasing openness and consumer choice, particularly with respect to applications. Many service providers and manufacturers, recognizing the appeal this model holds for consumers, have embraced this openness, though they have no control over the impact that third party applications and devices may have on network accessibility. This potential impact cannot be overstated.

Motorola, Inc. has observed that certain applications alter the functionality of devices in a way that is equivalent to a reengineering of the device,<sup>14</sup> and a similar effect can result from the attachment of unauthorized or unexpected devices to a service provider's network. Manufacturers and service providers engage in extensive development and testing to ensure that devices and services are accessible to a wide range of the public. When a third party application or device enables a different functionality than the one endorsed by the service provider or

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<sup>14</sup> See Comments of Motorola Inc., CG Docket No. 10-213 at 6-7 (filed Nov. 22, 2010).

manufacturer, the service provider or manufacturer should not be held responsible for any lack of accessibility that may result. An alternative interpretation could prompt service providers and manufacturers to retreat from the current trend towards openness in a way that would stymie competition and innovation, and ultimately disserve consumer choice.

## **V. THE ACHIEVABILITY STANDARD REQUIRES A FACT-BASED, CASE-BY-CASE ANALYSIS**

The Commission should conduct a broad-based factual analysis considering a wide variety of factors when determining whether meeting an accessibility requirement is achievable for a particular service or device. Section 716 imposes an obligation on manufacturers and service providers to make equipment and services used for advanced communications services accessible unless it is “not achievable,” which is defined to mean “with reasonable effort or expense.”<sup>15</sup> As the Commission notes in the Notice, the House report makes clear that the Commission should “afford manufacturer and service providers as much flexibility as possible” in implementing Section 716.<sup>16</sup> Thus, the Commission should apply the four factors identified in the CVAA broadly,<sup>17</sup> recognizing the demonstrated commitment of the industry to providing accessibility and making appropriate allowances for innovation and commercial considerations.

The Commission’s analysis should consider achievability as it is expressed across an entire product line. One of the four statutory factors of the achievability analysis is “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.”<sup>18</sup>

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<sup>15</sup> See 47 U.S.C. §§ 617(a)(1), (b)(1), (g).

<sup>16</sup> House Report at 24.

<sup>17</sup> See 47 U.S.C. § 617(g).

<sup>18</sup> *Id.*

This factor demonstrates an awareness that a device or service cannot be considered in isolation from the entire family of devices and services offered. Some models or levels of devices or services will be better suited to achieving accessibility than others. AT&T agrees with the Commission that this section requires “that where a company has made a good faith effort to incorporate accessibility features in different products across multiple product lines, this should count favorably toward a determination that the company is in compliance with Section 716 for the product in question.”<sup>19</sup>

This flexible, product line-based approach is supported by the rule of construction contained in Section 716(j) that “[t]his section 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.”<sup>20</sup> Congress recognized that it is not necessary to the accomplishment of the goals of the CVAA that every device and service be completely accessible. Consequentially, the achievability analysis does not require that a service provider or manufacturer seek to maximize accessibility above all other design and marketing considerations for every device. When considering whether a remediation or accessibility feature is achievable with respect to a specific device or service, the Commission should consider the extent to which other instances within the line of devices and services satisfy the accessibility requirement.

## **VI. THE COMMISSION’S NOMINAL COST ANALYSIS SHOULD FOCUS ON CONSUMER PERCEPTION OF THE COST.**

When determining whether a potential accessibility solution to be provided to a consumer is available at a “nominal cost,” the Commission’s analysis should be flexible enough to enable

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<sup>19</sup> Notice, 26 FCC Rcd 3161 ¶ 75.

<sup>20</sup> 47 U.S.C. § 617(j).

creative means for service providers and manufacturers to subsidize the cost of the solution. Sections 716(a)(2) and (b)(2) give service providers and manufacturers flexibility to comply with the advanced communications services accessibility requirements by relying on third party solutions that are “available to consumers at nominal cost.”<sup>21</sup> The Commission seeks comment on how to apply the nominal cost standard, and specifically on the proposed definition that any fee for a third party accessibility solution should be “small enough so as to generally not be a factor in the consumer’s decision to acquire a product or service that the consumer otherwise desires.”<sup>22</sup> AT&T does not take issue with this definition. However in applying it, the Commission should consider how the cost is presented to and experienced by the consumer at the time of purchasing, rather than only the total cost of the solution.

As the Commission is aware, it is a common practice in the advanced communications services industries for service providers and manufacturers to absorb the upfront costs of a product and regain them over time by spreading the cost to the consumer over the duration of a contract period or the life of a device. The Commission should clarify that service providers and manufacturers will be permitted to initially subsidize and spread out the cost of an accessibility solution to the consumer such that the cost at the time of purchase and the additional cost in each installment will all qualify as nominal. This focus on the consumer perception of the cost is supported by the language of the CVAA itself, which specifies that the solution should be presented at nominal cost “to the consumer,”<sup>23</sup> and it is in keeping with the proposed definition, which emphasizes the consumer’s decision-making process with respect to a purchase.

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<sup>21</sup> 47 U.S.C. § 617(a)(2), (b)(2).

<sup>22</sup> Notice, 26 FCC Rcd at 3163 ¶ 78 (citing House Report at 24).

<sup>23</sup> 47 U.S.C. § 617(a)(2), (b)(2).

**VII. THE COMMISSION’S IMPLEMENTATION OF SECTION 717 SHOULD BE RESULTS-ORIENTED AND APPROPRIATELY LEVERAGE EXISTING INDUSTRY AND ADMINISTRATIVE PROCESSES.**

The Commission’s application of the recordkeeping and enforcement provisions of Section 717 of the CVAA should emphasize achieving the pro-consumer purposes of the CVAA and ensuring accountability, over creating new formalities and compliance obligations. Developing effective recordkeeping and enforcement processes is essential to ensuring the success of the CVAA’s advanced communications services provisions. However, these processes are just a means to an end, and thus, whenever possible, the Commission should take advantage of existing processes and capabilities and should opt for more effective informal procedures.

The Commission indicates in the NPRM that it is inclined not to mandate that records be kept in any one standard form.<sup>24</sup> AT&T supports this proposal, as the CVAA will apply to a wide variety of companies with varying businesses and organizational structures. Most manufacturers and service providers in the advanced communications services industries already have in place comprehensive recordkeeping procedures that were developed in response to other regulatory and market imperatives. The Commission correctly determined that the appropriate course is to set the high level requirements as to the type of records that must be maintained and then allow service providers and manufacturers to implement these requirements as they see fit. The Commission should apply this same frugality to its proposed complaint procedures, which are unnecessarily complex and burdensome.

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<sup>24</sup> Notice, 26 FCC Rcd at 3178 ¶ 123.

**A. The Commission’s Proposed “Informal” Complaint Procedures Should Be Streamlined.**

As currently crafted, the proposed “informal” complaint procedures are overly complicated and formal. The Commission should streamline these procedures to make them an effective complaint resolution procession for consumers. AT&T believes that an ideal informal complaint process should present an opportunity for manufacturers and service providers to understand and address concerns that users might have with a minimum expenditure of time, money, and other resources by all parties. In the end, informal complaints should, wherever possible, be resolved informally.

**1. The Commission Should Require Pre-filing Notification of Service Providers and Manufacturers by Potential Complainants.**

AT&T supports the suggestion that potential complainants should first notify manufacturers or service providers of their intention to file a complaint.<sup>25</sup> The procedures detailed in the Notice will require the dedication of substantial resources by consumers in prosecuting and by the Commission in reviewing and adjudicating complaints. However, service providers and manufacturers already have complaint resolution and customer retention processes in place for addressing consumer complaints under Section 255. As discussed in the introduction to these comments, AT&T even has multiple customer call centers dedicated to meeting the needs of customers with disabilities. Thus, the vast majority of complaints can be addressed to the satisfaction of the consumer by the service provider or manufacturer without an expenditure of Commission resources. While AT&T understands the concern that a pre-filing notification requirement might delay resolution of complaints, in reality a 30 day period for providers to address informally complaints prior to the instigation of the Commission’s complaint

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<sup>25</sup> See Notice, 26 FCC Rcd at 3170 ¶ 128.

proceedings would likely be the most expeditious manner to resolve the vast majority of consumer complaints and would certainly be more efficient than any version of the complaint procedures contemplated in the proposed rules.

**2. The Proposed Informal Complaint Process is Overly Complex and Adjudicatory.**

As currently crafted, the Commission’s proposed “informal” complaint process is exceedingly complex and formal, and unnecessarily adjudicatory in nature. The Commission should simplify this process to make it more accommodating to consumers and less burdensome on service providers, manufacturers, and the Commission itself. A more streamlined process is likely to yield better results for consumers more quickly.

Much different than the *optional* service provider answer contemplated by the CVAA,<sup>26</sup> under the Commission’s proposed rule, there would be twelve mandatory components to the required service provider response to an informal complaint. Among the required components of the response would be a complete description of “the procedures and processes used by the manufacturer or service provider to evaluate whether it was achievable to make the product or service accessible and usable;” a description of “the manufacturer’s basis for determining that it was not achievable to make the product or service accessible and usable;” “the names, titles, and responsibilities of each decision maker in the evaluation process;” and “all documents supporting the manufacturer’s or service provider’s conclusion” regarding the achievability of accessibility. Such copious detail and specificity in an “informal” process go far beyond the requirements of the CVAA, which indicated only that, at its option, the service provider or manufacturer “*may*

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<sup>26</sup> See 47 U.S.C. § 618(a)(4) (guaranteeing that “the party that is the subject of the complaint shall have a reasonable opportunity to respond”).

include in such response any factors that are relevant to such determination.”<sup>27</sup>

The Commission should remain solution-oriented in this process and should not transform informal complaints into a more rigidly structured dispute resolution mechanism. Many informal complaints are likely to be vague, brief, or highly particular to the circumstances of the complainant. In these cases, the service provider will often be able to efficiently address the complaint without going through the onerous Commission process under consideration. Moreover, the formality of the process may deter many potential complainants whose problems would otherwise be simply resolved. The process will also unnecessarily burden the Commission, which must review and consider all the required submissions in time for it to deliver its decision within the statutorily-mandated 180 day time period.

The unreasonable burdens imposed on the parties by the proposed informal complaint process become clear in a consideration of how the process would actually work in practice. For example, consider a hypothetical blind consumer who believes that a service provider has failed to make the menu system on its VoIP service accessible to the blind. If the consumer were to contact the service provider first, the service provider may be able to inform the consumer that the unique menu system on this product is incompatible with screen reading software, but refer the consumer to an accessible third party product, or an alternative version of the same product, that would meet their needs and be compatible with the original product. However, if the consumer, having heard that the Commission has adopted new “informal” complaint processes to address this sort of concern, decides instead to file a complaint, she will eventually find herself buried in paper, months later, with no more satisfactory a response.

Under the proposed process, the consumer must first file an “informal” complaint with

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<sup>27</sup> *Id.* (emphasis added).

the Commission including her name and contact information, the name and contact information of the service provider, details about her acquisition and use of the product, a detailed statement of how the product or service violates the CVAA (including documentation in support), and other information the Commission may require. Upon receiving this information, the Commission must review it all for completeness and accuracy. When it has determined that the information formulates a complete complaint, the Commission must forward it on to the designated agent of the service provider.

At this point, the service provider cannot simply notify the Commission that there is a widely available accessible solution for the consumer, instead it must file with the Commission and serve upon the complainant a detail compulsory answer that includes: a response to each allegation made by the complainant, a history of the steps the service provider took to attempt to make the product accessible before deciding to rely upon an alternative solution, a description of the processes and metrics used by the service provider, documentation for all of the above, and certification by an officer of the company. The service provider must also describe its remedial actions and offer any additional information requested by the Commission.

The consumer, having received what will likely be a lengthy service provider response, now has ten days in which to file a reply. For its part, the Commission must review the detailed information provided, and then issue a decision as to the existence of any violation. This entire process will take months and possibly find the complainant, the service provider, and the Commission inundated with reams of paper or other data—all over a complaint that might have easily been addressed through a brief phone call, informal letter to the service provider, or simple recitation of the facts and circumstances by the complainant and the service provider, without all of the burdens and delays contemplated by the process proposed in the Notice. Multiply this

process—which is itself comparable to the demands of minor litigation—by even a dozen informal complaints in a given year, and the substantial burdens that will be placed on industry and the Commission soon become untenable. Meanwhile, consumers with disabilities will grow frustrated with what they see as an unnecessarily complicated and bureaucratic “informal” process that does not provide them with satisfactory results. It even presents the potential to discourage consumers, frustrated by the unwieldy informal process, from pursuing the formal complaint process, which they would likely perceive as more formal, intense, and lengthy. Rather than adding excess formality and bulk to the complaint resolution process, the Commission should adhere to the much more streamlined vision of informal complaints embodied in the CVAA.

Regardless of the informal complaint procedures the Commission ultimately adopts, service providers should receive more than twenty days to develop and deliver their response to the informal complaint. Under any procedures, and particularly with the extremely burdensome requirements being considered, completing an adequate response may necessitate substantial research, compilation of records, and internal coordination among multiple departments and business units within the service provider’s or manufacturer’s organization, as well as coordination with vendors and third party developers. This is not to mention the additional time that may be required to convert the information into the accessible medium of the consumer’s choice. At a minimum, service providers should receive forty-five days to answer an informal complaint. The complainant, in turn, should receive at least twenty days to file and serve a reply, if he wishes. Under this revised timeline, even accounting for Commission processing time between the initial filing of the complaint and its forwarding to the service provider or manufacturer, ample time—over 100 days—would still remain in the 180 day statutory time

limit in which the Commission must make its decision.

**B. The Proposed Formal Complaint Rules are Inconsistent with the CVAA.**

The Commission has proposed to adopt formal complaint rules that are inappropriate for the complaint process contemplated under the CVAA. The Notice explains that the new formal complaint rules proposed to be adopted at Section 8.23 through 8.37 of the Commission’s rules are based on the general procedures laid out in Sections 1.720-1.736.<sup>28</sup> However, it appears that these rules were not sufficiently reviewed or modified to be appropriate for this application. The Commission must review these rules in detail and reject any that exceed the authority granted under or otherwise conflict with the provisions of the CVAA.

For example, the proposed Section 8.25 states that “a complaint against a common carrier may seek damages.”<sup>29</sup> This rule is wholly out of place and will only create confusion. The CVAA does not provide for a private right of action for damages. Indeed, the only consumer-facing remedy for a formal complaint contemplated by the CVAA is a Commission order directing the manufacturer or service provider to bring the service or device at issue into compliance.<sup>30</sup> Moreover, many of the advanced communications services at issue in the CVAA are information services, and thus are not provided on a common carrier basis. The Commission should strike the entirety of proposed Section 8.25 and should also closely review the rest of the newly proposed rules to ensure that they are actually appropriate for the CVAA formal complaint process.<sup>31</sup>

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<sup>28</sup> See Notice, 26 FCC Rcd at 3185 ¶ 141.

<sup>29</sup> *Id.* at App. B, Proposed Rule Section 8.25.

<sup>30</sup> See 47 U.S.C. § 618(a)(3)(B)(i).

<sup>31</sup> For example, proposed Section 8.24 on the “Format and content of formal complaints” instructs complainants to state “[t]he relief sought, including recovery of damages and the amount of damages claimed,” and “a complete statement of facts, which, if proven true, would

## VIII. CONCLUSION

AT&T is committed to ensuring that our customers with disabilities are fully able to share in the benefits of the latest advanced communications services. The CVAA promises to extend this value across the entire industry. In implementing this important legislation, however, the Commission must be mindful of the protections for innovation that Congress wisely included in the statute. The rules adopted pursuant to the CVAA should remain results-oriented, take advantage of existing processes where ever possible, and always strive to preserve the industry's flexibility to serve all of its customers while continuing to develop the advanced communications services and devices that drive the digital economy.

Respectfully submitted,



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support complainant's calculation of damages for each category of damages for which recovery is sought." Notice, App. B, Proposed Rule Section 8.24(a)(7), (d)(2).