

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)	
Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision)	CG Docket No. 10-145
)	

COMMENTS OF VERIZON AND VERIZON WIRELESS

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COMMENTS OF VERIZON¹ AND VERIZON WIRELESS

The Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) was designed to ensure that millions of Americans with disabilities have greater access to Advanced Communications Services.² The CVAA strikes a careful balance between accessibility and achievability, and as it implements the new law, the Commission must adhere to that framework and maintain that balance. Verizon was pleased to have actively supported the

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various Sections of Title 47 of the United States Code). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on Oct. 8, 2010, to make technical corrections to the CVAA and the CVAA’s amendments to the Communications Act of 1934.

legislation, and it now offers these comments in response to the Notice of Proposed Rulemaking.³

I. THE NEW REQUIREMENTS SHOULD BE PHASED IN OVER TIME.

Under the statute, the Commission is required to adopt rules to implement Sections 716 and 717 within one year of enactment of the CVAA, and within three years for Section 718.

Verizon looks forward to actively participating in the rulemaking process, through these comments and other ways which may help the Commission shape its implementing rules.

Once the Commission adopts final rules, however, the industry will need time to bring its new products and services into compliance. The product development cycle is such that there will be new products, equipment, and services in the pipeline whenever the new rules become effective. Companies cannot design their advanced communications services to meet requirements that do not yet exist. And retrofitting those products, equipment, and services that are in development could be very costly, stifling the product development itself.

The best way for the Commission to ensure that new advanced communications services comply in an efficient manner with the rules that the Commission will adopt in this proceeding would be to establish a date certain by which new advanced communications services must comply. In order to account for the product development cycle, that effective date should be at least two years after the new rules take effect. This will give companies the opportunity to comply with the new achievable standard, recordkeeping requirements, and other substantive rules. Any other result could have a chilling effect on product development. And there should not be a requirement to bring advanced communications services equipment and services already

³ *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*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133 (2011) (“*NPRM*”).

in the marketplace into compliance with the CVAA. The cost and burden of retrofitting equipment and services already being offered would be substantial.

II. THE SCOPE OF SOME OF THE PROPOSED RULES IS OVERLY BROAD.

The CVAA strikes a balance between ensuring accessibility to new broadband and video services and technologies while not curtailing the innovation in advanced communications services from which all consumers benefit, including those with and without disabilities. Many of the Commission's proposed rules go beyond what Congress authorized, however, and while they seek to promote accessibility, they would deter innovation and the use of the very third party solutions that would benefit persons with disabilities. Verizon supports adoption of balanced rules -- in the manner Congress intended -- to provide consumers with the greatest number of innovative and accessible devices and services.

A. Carriers Are Not Liable for Third Party Applications

The Commission seeks comment on whether there are circumstances where providers of advanced communications services would be responsible for the accessibility of third party applications and services.⁴ In today's mobile environment, with open platforms and Application Programming Interfaces (APIs), carriers have only limited control and knowledge over what their customers download to their devices. While it is common for carriers to request that equipment providers to preload handsets with certain applications, this is done to accommodate consumer demand, not as a carrier "offering" subject to Section 716.

The CVAA reflects the fact that, in those circumstances, the software developers or application providers offering the product, not the underlying carriers, are best equipped to ensure an application's accessibility. Carriers are therefore not liable for third-party applications

⁴ *NPRM* ¶ 27.

that their customers may download onto their mobile devices, and it would be contrary to the CVAA to hold carriers responsible for compliance with respect to applications over which they have only limited control. Even if the software that the customer downloads is available on the particular mobile carrier’s website or application store, the developers of the applications, not the providers of the mobile service, are the parties directly responsible for the applications’ content, and they are responsible for the accessibility of the software they develop that is subject to the CVAA. Further, Congress expressly authorized the Commission to “determine the obligations” of “providers of applications or services accessed over service provider networks” – underscoring that those entities have their own CVAA obligations independent of the underlying carrier.⁵

This approach is also compelled by Section 2(a) of the CVAA, which exempts carriers from any liability for third-party software downloaded by their customers, except in very limited circumstances where the carrier itself relies on that software for its own compliance purposes.⁶ Requiring carriers to ensure accessibility in these cases would result in more limited offerings or closed platforms – which would not support innovation in the wireless industry. Furthermore, a carrier should not be responsible for the accessibility of upgrades to software that it does not control, regardless of whether the software is preloaded.

B. Providers of Advanced Communications Services Should not Include Resellers

The Commission proposes to include resellers and aggregators as providers of Advanced Communications Services. But to the extent a carrier is strictly reselling an Advanced Communications Service, the sole control of the features and functions rests with the underlying

⁵ 47 U.S.C. §617(e)(1)(C).

⁶ See Pub. L. No. 111-260, Section 2(a).

service provider, not the reselling carrier. In that case, where the resold product is sold as is, off the rack, the reseller should not have independent compliance obligations.

C. The Commission Must Apply the Statutory Definition of Advanced Communications Services Consistent with Congress’s Intent

Congress identified four types of services that comprise Advanced Communications Services: interconnected Voice over Internet Protocol (VoIP) service, non-interconnected VoIP service, electronic messaging service (EMS), and interoperable video conferencing. These types of Advanced Communications Services are directly related to the types of equipment and software covered by Section 716.

As a threshold matter, the definitions of all Advanced Communications Services should be limited to services and equipment that are designed with Advanced Communications Services as their primary purpose, as determined by the provider and equipment manufacturer. As Microsoft commented earlier in this proceeding, the specific definitions of Advanced Communications Services and the broad waiver authority that the CVAA grants to the Commission suggest that Congress intended for the Commission to have the discretion to craft the scope of Section 716, or to waive Section 716 for services whose primary purpose is not Advanced Communications Services.⁷

Interconnected VoIP Service. Verizon supports the Commission’s proposal to continue to define interconnected VoIP in accordance with Section 9.3 of the Commission’s rules.⁸

Section 716(f) of the CVAA provides that “the requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the

⁷ Comments of Microsoft, *Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, at 3 (Nov. 22, 2010) (“Microsoft Comments”).

⁸ 47 C.F.R. § 9.3.

requirements of Section 255 on the day before the date of enactment of the [CVAA].”⁹ As the Commission notes in the *NPRM*, “this language clearly provides that interconnected VoIP equipment and services shall remain subject to Section 255.”¹⁰ The Commission’s proposed new rule 8.2(d) captures Congress’s intent that the Commission exclude interconnected VoIP from the proposed new requirements, because it is already subject to the requirements of Section 255.

For multi-purpose devices and services, Verizon agrees with AT&T that the Commission should apply Section 255 “to the extent that the device provides a service that is already subject to Section 255 and apply Section 716 solely to the extent that the device provides Advanced Communications Services that is not otherwise subject to Section 255.”¹¹ Examining how the service is offered to the end user would be consistent with how the Commission interprets “service” and “offering” under the Act.¹² This interpretation will provide service providers and manufacturers with the certainty to determine what functions of a multi-purpose device must comply with the relevant accessibility requirements –preventing unnecessary delays associated with development.

Non-Interconnected VoIP Service. In the *NPRM*, the Commission proposes to treat any offering that meets the criteria of the statutory definition as non-interconnected VoIP, including

⁹ 47 U.S.C. § 617(f).

¹⁰ *NPRM* ¶ 30.

¹¹ *NPRM* ¶ 30, citing Comments of AT&T, *Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, at 5 (Nov. 22, 2010) (“AT&T Comments”).

¹² See, e.g. *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶¶ 40-41 (2002) *aff’d sub. nom. NCTA v. Brand X Internet Services*, 545 U.S. 967 (2005).

services that only have a “purely incidental VoIP service.”¹³ Verizon disagrees with this approach. The Commission should amend its proposed rules to exclude services with incidental non-interconnected VoIP services from the requirements of the CVAA. Only services whose primary purpose is non-interconnected VoIP would be services whose primary purpose is Advanced Communications Services, and applying the requirements more broadly would adversely affect innovation.¹⁴

Electronic Messaging Service. The CVAA defines EMS as a “service that provides real-time or near real-time non-voice message in text form **between individuals** over communications networks.”¹⁵ Verizon agrees with the Commission that the definition includes “more traditional, two-way interactive services such as text messaging, instant messaging, and electronic mail, rather than...blog posts, online publishing, or messages posted on social networking websites.”¹⁶ In addition, Verizon agrees with several commenters that the phrase “between individuals” precludes the application of the accessibility requirement to communication in which no human is involved, such as automatic software updates or other device-to-device or machine-to-machine communications where no human intervention is involved.¹⁷ Further, Verizon agrees with TIA that Section 2(a) of the CVAA does not permit the

¹³ *NPRM* ¶ 32.

¹⁴ See 47 U.S.C. § 617(b)(1) “[A] provider of advanced communications services shall ensure that such services *offered* by such provider...are accessible...” (emphasis added).

¹⁵ 47 U.S.C. § 153(19) (emphasis added).

¹⁶ *NPRM* ¶ 33 *citing* S. Rep. No. 111–386, at 9 (2010), H.R. Rep. No. 111-563, at 23 (2010) (“House Report”).

¹⁷ See Comments of Consumer Electronics Association, *Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, at 7 (Nov. 22, 2010); Comments of Telecommunications Industry Association, *Advanced Communication Provisions of the Twenty-First Century Communications and Video*

Commission to define as EMS those services or applications that merely provide access to EMS, for example an internet browser that a consumer might use to access EMS. The Commission should confirm that access to EMS via a browser does not subject a device to EMS on its own. The Commission should consider the purpose for which the device was primarily designed to determine whether the device is “offering” EMS.

Interoperable Video Conferencing Services

Although the CVAA defines Advanced Communications Services to include “interoperable video conferencing services,”¹⁸ and nowhere speaks only of “video conferencing services,” the Commission seeks comment separately on the meaning of “video conferencing services” and of “interoperable.”¹⁹ The Commission must not adopt rules that give no meaning or significance to the term “interoperable,” however, as this would render the term superfluous, contrary to basic tenets of statutory construction.

Furthermore, Congress did not give the Commission authority to require interoperability among all video conferencing services.²⁰ The Commission was only given authority to create “performance objectives to ensure the accessibility, usability and compatibility of” those services that fall within Section 716’s scope.²¹ The CVAA does not give the Commission the authority to impose a particular capability on a service in order to bring it within the scope of the Advanced

Accessibility Act of 2010, CG Docket No. 10-213, at 7-8 (Nov. 22, 2010) (“TIA Comments”); Microsoft Comments at 3, fn.4.

¹⁸ *NPRM* ¶ 14.

¹⁹ *Id.* ¶ 35.

²⁰ *See id.* ¶ 108.

²¹ 47 U.S.C. § 617(e)(1)(A).

Communications Services definition.²² Industry is in the best position to develop standards for interoperability between video conference services as it has done for text messaging, picture and video exchange among carriers operating on different technologies and equipment, and the degree to which interoperability is warranted is appropriately left to consumer demand and the market place.

The Commission also asks whether certain other services, such as video voice mail, should be included in the definition. Video voice mail clearly is not a real-time communication, and it should not be considered advanced communications services for these purposes.

D. Congress Intended that the Commission Broadly Use its Waiver Authority to Facilitate Innovation

A blanket waiver process, which the *NPRM* discusses but does not endorse, would provide the kind of certainty and administrative efficiency from which all involved would benefit. As Microsoft has noted, “[g]ranteeing prospective categorical waivers is essential to encourage manufacturers and service providers to build communication features into services and equipment devices that do not have as their core purpose advanced communications...[f]ostering this innovation will enrich the communication choices and solutions available to all consumers, including those with disabilities.”²³ The Commission has discretion to grant waivers of long or short duration, but a minimum eighteen month period would ordinarily be warranted.²⁴

²² 47 U.S.C. § 617(e)(1)(B).

²³ Microsoft Comments at 7.

²⁴ *NPRM* ¶ 60.

Congress added Section 716(h)(1) to the CVAA, which grants the Commission broad waiver authority, to balance the needs of accessibility with the need to promote innovation. Accordingly, the Commission must exercise its waiver authority in order to meet this balance.

III. THE CVAA'S REQUIREMENTS SHOULD BE APPLIED IN A MANNER THAT PRESERVES FLEXIBILITY TO SATISFY CONGRESS' OBJECTIVES.

A. Achievable Standard

Service providers and manufacturers must meet the accessibility requirements of Section 716 “unless [those requirements] are not achievable.”²⁵ Section 716(g) of the CVAA defines the term “achievable” to mean “with reasonable effort or expense, as determined by the Commission” and requires the Commission to consider four factors in making determinations about what “constitutes reasonable effort or expense.”²⁶

As the Commission recognizes, Congress intended the Commission to “interpret the accessibility requirements in this provision the same way as it did for [S]ection 255, such that if the inclusion of a feature in a product or service results in a fundamental alteration of that service that is *per se* not achievable to include that function.”²⁷ Verizon supports the Commission’s proposal to interpret the achievability standard consistent with this directive.

Further, Verizon agrees with the Commission that it should only consider the four factors enumerated in the statute in making its achievability determinations. Below Verizon provides comments on the first and fourth factors:

²⁵ 47 U.S.C. §§ 617(a)(1) and (b)(1).

²⁶ *See* 47 U.S.C. § 617(g).

²⁷ *NPRM* ¶ 69.

Factor 1: “The nature and cost of the steps needed to meet the requirements of this Section with respect to the specific equipment or service in questions.”²⁸

The statute is clear that only the “specific” equipment or service in question can be considered when evaluating whether accessibility is achievable. Similar functions do not equate to similar costs or technical feasibility – therefore it would be inappropriate for the Commission to assume the costs and feasibility of implementing accessibility across different operating systems, equipment and services is the same. That approach would be in stark contrast to the CVAA’s prohibition against mandated technical standards and, in some cases, the overarching prohibition on imposing proprietary technology.²⁹

Proposals suggesting that the Commission should consider an entity’s entire budget in evaluating the cost of accessibility do not have a basis in the statute. Indeed, the original language of H.R. 3101 did include as a factor “the financial resources of the manufacturer or provider,” but the final version of the statute does not include that requirement. Accordingly, it would be contrary to the intent of Congress for the Commission to include that requirement in its rules. Further, that interpretation would make the development of many new devices and services excessively expensive, thereby stifling innovation.

Factor 4: Extent to Which Offering Has Varied Functions, Features, and Prices.³⁰

Verizon supports an interpretation of Section 716(g)(4) that requires that where a company has made a good faith effort to incorporate accessibility features in different products

²⁸ 47 U.S.C. § 617(g)(1).

²⁹ See Pub. L. No. 111-260, Section 3; 47 U.S.C. § 617(e)(1)(D).

³⁰ See 47 U.S.C. § 617(g)(4).

across multiple product lines, this should count favorably toward a determination that the company is in compliance with Section 716 for the product under review. As noted by TIA, this approach would appropriately reward companies that make substantial investments in accessible products, while allowing flexibility.³¹

B. Industry Flexibility

Nominal Cost. The Commission should consider the meaning of “nominal cost” associated with a third party solution on a case-by-case basis considering factors like the type of product or service and the cost of the product or service (excluding the third party solution). It would be inappropriate to prescribe a percentage or amount as proposed by some commenters. Rather, as the Commission proposed in the *NPRM*, the Commission should echo the legislative history and define nominal cost as “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.”³²

Access to Third Party Solutions. Verizon opposes the proposal that permissible third party solutions “cannot be an after-market sale for which the user must perform additional steps to obtain...must be fully operable by a person with a disability without having to turn to people without disabilities in order to perform setup or maintenance...and must be fully documented and supported.”³³ This proposal fails to recognize the very fact that third-party solutions are something other than built-in solutions. It would ignore Congress’s intent that industry could provide accessibility solutions through either built-in solutions or third-party solutions.³⁴

³¹ TIA Comments at 13.

³² *NPRM* ¶ 78 citing House Report at 24.

³³ *NPRM* ¶ 80.

³⁴ 47 U.S.C. §§ 617(a)(2) and (b)(2).

Further, requiring manufacturers and service providers to provide support for third-party solutions would effectively require a contractual relationship, including intricate knowledge of a third-party's proprietary solution, where none may exist.

Accessible and Usable By. Verizon supports the adoption of the Part 6 definitions of “accessible” and “usable” as they are well established having been previously adopted by the FCC in its implementation of its Section 255.³⁵ The existing Part 6 rules provide outcome-oriented guidance familiar to all stakeholders that provides certainty to all parties. This is not the case for the Access Board's Draft Guidelines, which are a work in progress and would be inappropriate for inclusion into the Commission's regulations at this time.³⁶

IV. RECORDKEEPING AND ENFORCEMENT REQUIREMENTS.

Recordkeeping. Under the statute, the recordkeeping requirements begin “one year after the effective date of the regulations promulgated pursuant to Section 716(e)...”³⁷ For any complaint or enforcement proceeding concerning a period prior to the effective date of the requirement, the FCC could not conclude that a party violated the record keeping requirement.

Verizon would support industry-based development of a standard voluntary form that would facilitate compliance with Section 717. If the FCC adopts specific requirements, compliance with Section 717's requirement that entities “maintain, in the ordinary course of business and for a reasonable period, records of the efforts taken by such [covered entity]”³⁸ should not be overly burdensome. Further, the Commission should ensure that there is flexibility

³⁵ 47 C.F.R. § 6.3(a).

³⁶ See *NPRM* ¶ 83; see also *id.* n.241.

³⁷ 47 U.S.C. § 618(a)(5)(A).

³⁸ *Id.*

in how covered entities comply, taking into consideration the type of entity (manufacturer or service provider) as well as the product and service being provided. Verizon does not support expanding the recordkeeping requirements beyond those specified in Section 717:

(i) Information about the manufacturer's or providers efforts to consult with individuals with disabilities. (ii) Description of the accessibility features of its products and services. (iii) Information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.³⁹

These statutory requirements were the carefully crafted outcome of a lengthy legislative process, and the Commission should not second-guess Congress here.

Enforcement – Pre-Filing Notice. Verizon supports enforcement process rules that meet Congress' goal of ensuring compliance without being overly burdensome on the regulated entities. The Commission seeks comment on requiring potential complainants to notify the defendant prior to filing a complaint.⁴⁰ Verizon supports a pre-filing notice requirement, as it will help to resolve many complaints before they reach the Commission. It is Verizon's experience that providing the complainant and defendant an opportunity to communicate first can resolve many potential complaints, which is to the benefit of the consumer, industry, and the FCC. Further, there is nothing about the pre-filing notice process as proposed that would prevent or prejudice the complainant from proceeding with the complaint.

Enforcement – Informal Complaint Process

The FCC must not adopt rules that are so broad as to be overly burdensome for carriers when responding to informal complaints. In the *NPRM* the Commission proposes five

³⁹ *Id.*

⁴⁰ *NPRM* ¶ 128.

requirements that a complainant should include in his informal complaint.⁴¹ Verizon supports this proposal and the Commission’s recognition that complaints that do not satisfy the pleading requirements will be dismissed without prejudice to refile.⁴² Verizon supports the Commission’s proposal to establish points of contact for complaints and inquiries under Section 255, 716, or 718. Those requirements would be consistent with existing Section 255 requirements and would facilitate prompt and effective service of complaints.

The proposed twenty-day response period, however, is too brief.⁴³ It does not provide enough time for a service provider to collect the necessary responsive information both within its own organization and from the appropriate manufacturer. A more appropriate period of time for defendants to respond would be 45 days from the date the Commission determines the complaint satisfies the filing requirement. This would still give the Commission substantial time to complete its review of the defendant’s answers and issue an Order within the statutory 180-day period. At a minimum, the Commission should acknowledge that, depending on the nature of the complaint, additional time beyond twenty days may be warranted in many cases.

The Commission should more narrowly craft what is required in answers, as the current proposals are overly burdensome.⁴⁴ The FCC need only collect information that is relevant to whether a service or equipment is accessible and, if not accessible, why accessibility was not achievable. Proposals that defendants include the names of company personnel; require certification regarding the ultimate determination of accessibility; and provide “all documents”

⁴¹ *NPRM* ¶ 136.

⁴² *See NPRM* at n.397.

⁴³ *NPRM* ¶ 138.

⁴⁴ *Id.*

that might be relevant to achievability would be excessively burdensome. Rather, a narrative response from the defendant detailing accessibility efforts would often be more appropriate.

Verizon supports the Commission's conclusion that it must exercise remedial authority selectively and carefully.⁴⁵ This is consistent with the CVAA's requirements where the Commission "may" require a manufacturer or service provider to bring the service or equipment into compliance. Verizon does not believe that the Commission should establish a standard period in which a provider or manufacturer would be required to implement any mandated solution. Rather, the Commission should make such determinations on a case-by-case basis, which will allow the Commission to craft a compliance deadline that is based on the unique circumstances of the equipment or service. Finally, before any remedial action is mandated the Commission should give the defendants at least 30 days to comment on the proposed action in order to ensure that the Order has an adequate record basis.

V. CONCLUSION.

As discussed herein, Verizon welcomes the opportunity to comment on the proposed rules implementing the Accessibility Act, which will ensure that millions of Americans with disabilities will have greater access to advanced communications services. Further, it urges the Commission to follow Congress's lead and balance goals of promoting accessibility and preserving continued innovation.

⁴⁵ *NPRM* ¶ 140.

Respectfully submitted,

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