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
	)	
Accessible Mobile Phone Options For People Who Are Blind, Deaf-Blind, or Have Low Vision	)	CG Docket No. 10-145
	)	

COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. ("TWC") respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceedings.[1] The NPRM seeks to implement Sections 716 and 717 of the Twenty-First Century Communications and Video Accessibility Act ("CVAA"), a landmark piece of legislation that laudably seeks to ensure that people with disabilities are able to reap the benefits of advanced services and technological progress.[2] TWC commends the Commission for its proactive and ongoing efforts to further the CVAA's vision—through the NPRM as well as workshops and other requests for public input—and it looks forward to working with the Commission and other stakeholders in

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[1] *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, CG Docket No. 10-213 *et al.* (rel. Mar. 3, 2011) ("NPRM").

[2] Twenty-First Century Communications and Video Accessibility Act of 2010, §§ 716, 717, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

pursuit of these shared goals. As explained below, the Commission should adopt a flexible approach to implementing the CVAA that promotes collaboration among all relevant entities and enables manufacturers and providers of advanced communications services ("ACS") to continue innovating. As one example, the Commission should apply Section 255 uniformly to existing interconnected voice-over Internet Protocol ("VoIP") services as well as new products that include that capability, rather than establish a bifurcated regime that would generate confusion and uncertainty, stymie innovation, and create gaps in coverage.

INTRODUCTION AND BACKGROUND

The CVAA and this proceeding present an opportunity for the Commission, the industry, and the disabilities community to work in concert to develop practical, innovative, and cost-effective solutions that will allow businesses to meet and even exceed the expectations of customers who wish to take full advantage of all the benefits of broadband and advanced communications services. Indeed, the CVAA itself is a product of cooperation among these stakeholders as well as a bipartisan coalition in Congress, and TWC encourages the Commission to build on that collaborative spirit in this proceeding.

Along with the cable industry as a whole, TWC strongly supported enactment of the CVAA.[3] In fact, TWC has sought to make disability access and inclusion a priority in its provision of services and in its corporate philosophy. TWC is the nation's second-largest cable operator and serves approximately 14.7 million customers in 28 different states over its

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[3] News Release, *Time Warner Cable Honors Enactment of 21st Century Communications and Video Accessibility Act*, Oct. 8, 2010, http://ir.timewarnercable.com/phoenix.zhtml?c=207717&p=irol-newsArticle&ID=1480656&highlight=; *see also* Public Notice, *Emergency Access Advisory Committee Announcement of Members and Co-Chairpersons*, DA 10-2318, at 3 (rel. Dec. 7, 2010) (noting appointment of Martha Kinder of Time Warner Cable to the Emergency Access Advisory Committee, which was established pursuant to the CVAA).

technologically advanced broadband networks passing nearly 27 million homes. In addition to offering basic and digital cable services, TWC is a leading provider of broadband Internet access and facilities-based VoIP services to customers across its footprint. In connection with its services, TWC complies with Section 255, provides access to telecommunications relay services ("TRS") and contributes to the TRS fund, and provides closed captioning for its video programming. And in its advocacy before the Commission, TWC has endorsed Commission action (using its ancillary authority) to extend disability protections like those set forth in Section 255 to the broadband context.[4]

Through its experiences providing services of all types to millions of customers throughout the country, TWC has been sensitized to the particular needs of people with disabilities and has sought to develop innovative ways to address them through the advanced technologies that are becoming available. For instance, TWC has actively explored options for enhancing access to its electronic programming guide ("EPG"), such as through the use of external hardware that offers a text-to-speech capability. In addition, in response to collaborative discussions with relevant stakeholders, TWC redesigned its closed captioning functionality to make the feature a top-level menu item on the EPG, thereby facilitating more convenient access. TWC also has dedicated customer support resources to addressing issues relating to closed captioning.[5]

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[4] *See, e.g.*, Comments of Time Warner Cable Inc., GN Docket No. 10-127, at 83 (filed July 15, 2010) (arguing that the Commission could extend disabilities access rules to broadband pursuant to its ancillary authority and based on an appropriate record).

[5] *See, e.g.*, *All Digital Cable FAQs—Closed Captioning*, http://www.timewarnercable.com/texas/site.faqs/DigitalCab/#Closed+Captioning (posting information on closed captioning); *Closed Captioning Customer Support*, http://www.timewarnercable.com/socal/support/closedcaptioning/ (providing contact information for the TWC Administrator specifically dedicated to addressing closed captioning support issues).

In addition, TWC engages in various outreach activities through which it seeks to enhance awareness of disabilities access issues. It has worked with stakeholders such as the American Association of People with Disabilities to ensure that customers with disabilities are able to access services that TWC offers.[6] In recognition of National Disability Awareness month last year, TWC partnered with the disAbility Resource Center to offer a workshop on basic computer and Internet skills for special needs children, instructing them on fundamental computing techniques (including how to adjust settings for the visually impaired) and on Internet safety in connection with searching and browsing websites.[7] TWC also is a leading corporate sponsor of the Global Initiative for Inclusive ICTs ("G3ict"), a public-private partnership dedicated to facilitating the implementation around the world of the Digital Accessibility Agenda defined by the Convention on the Rights of Persons with Disabilities ("CRPD").[8] And internally, TWC provides accommodations to employees with disabilities and emphasizes inclusion of people with disabilities in the workplace through its Diversity Council, which has been recognized as an industry leader.[9] Through these activities, TWC has witnessed first-hand

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6 Press Release, *Time Warner Cable Honors 20th Anniversary of Americans With Disabilities Act*, July 26, 2010, http://www.timewarnercable.com/East/about/inthenewsdetails.ashx?PRID=2970&MarketID=144.

7 David Morrison, *Time Warner Cable partners with dRC for Internet 101 class*, STAR NEWS ONLINE, Oct. 1, 2010, http://disabilities.blogs.starnewsonline.com/11311/time-warner-cable-partners-with-drc-for-internet-101-class/ (noting workshop in Wilmington, North Carolina).

8 http://g3ict.com/resource_center/ict_accessibility_company_profiles/twc.

9 *Diversity & Inclusion at Time Warner Cable*, *at* http://www.timewarnercable.com/MediaLibrary/1/1/Content%20Management/pdf/aboutus/diversity/TWC_Diversity_general.pdf; *see also Time Warner Cable 2010 Community Impact Report*, at 13, http://www.timewarnercable.com/MediaLibrary/1/1/Content%20Management/pdf/aboutus/TWC%202010%20CIR_Final%20LR.PDF (listing TWC employee networks, one of which is the "Coping & Leaning about Disabilities Network").

the benefits that can result when stakeholders work together to develop solutions to the critical issue of disabilities access.

DISCUSSION

The NPRM strikes the right chord on a number of core issues. In these comments, TWC briefly discusses three key points that are pertinent to the Commission's implementation of Sections 716 and 717 of the CVAA.

I. THE COMMISSION SHOULD ENCOURAGE INCLUSION BY DESIGN THROUGH A FLEXIBLE APPROACH TO IMPLEMENTING THE CVAA

As the NPRM notes,[10] Congress intended that covered entities be allowed flexibility in terms of how they comply with the CVAA's requirements, giving them full discretion to use either third-party or built-in solutions.[11] Indeed, the statute expressly mandates both "industry flexibility" and "Commission flexibility."[12] TWC urges the Commission to adhere to Congress's clear instructions in this respect by adopting a framework that preserves the ability of ACS providers and manufacturers to continue innovating. In particular, TWC encourages the Commission to set performance expectations but to avoid mandating specific technological solutions. The Commission also should steer away from an inflexible application of the "achievability" factors, consistent with the CVAA's legislative history.[13] By establishing benchmarks without micromanaging how providers and manufacturers must meet them, the Commission would foster an environment in which parties focus on developing consensus

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10 *See, e.g.*, NPRM ¶¶ 4-5, 69, 77.

11 47 U.S.C. §§ 617(a)(2)(A)-(B), (b)(2)(A)-(B).

12 *Id.* §§ 617(a)(2), (b)(2), (h).

13 NPRM ¶ 69.

solutions rather than engaging in endless disputes about the adequacy of compliance with rigid mandates.

Even if such flexibility were not mandated by the CVAA, it makes eminent good sense in a marketplace that is evolving rapidly. That is true in all contexts, and especially so in this one—as the Commission consistently has recognized. For instance, when the Commission first required telecommunications carriers to implement access to telecommunications relay services via the 711 dialing code, it determined that "[p]ermitting carriers to select the most economical and efficient means of implementing 711 access" would "allow maximum flexibility" and "promote innovative system designs," and it thus ruled that carriers would be "free to choose solutions that avoid or minimize any operational concerns."[14] The Commission reaffirmed that approach when it extended those requirements to interconnected VoIP providers, stating: "We conclude that the same technical and operational flexibility should be extended to interconnected VoIP providers. For this reason, we do not mandate any particular technology for implementing 711 access to TRS. This approach will allow interconnected VoIP providers to choose solutions that avoid or minimize operational concerns as they prepare for 711 access."[15]

The same approach is warranted here. Such flexibility is particularly appropriate in the Internet context today, as modern technology permits a wide array of creative solutions—including personalized solutions—for addressing the needs of consumers with different

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[14] *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Second Report and Order, 15 FCC Rcd 15191 ¶ 22 (2000).

[15] *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Report and Order, 22 FCC Rcd 11275 ¶ 43 (2007).

disabilities in a cost-effective manner. A flexible approach would allow providers like TWC to take full advantage of the outreach activities described above, allowing them to develop products and services that directly respond to consumers' evolving needs.

II. THE COMMISSION SHOULD ENSURE THAT ALL PARTICIPANTS IN CONSUMERS' COMMUNICATIONS EXPERIENCE ARE SUBJECT TO EQUAL OBLIGATIONS

The CVAA recognizes that the provision of ACS involves the participation of a wide range of entities—not just broadband service providers, but also equipment manufacturers.[16] Accordingly, the legislation clearly requires the Commission to subject manufacturers and service providers to the same rules. The NPRM apparently recognizes the need to subject service providers and manufacturers to equal obligations under the CVAA, and TWC urges the Commission not to waver in applying that broad scope. Otherwise, one weak link in the ACS chain will prevent the CVAA from fulfilling its purposes.

In particular, the Commission should be sure to hold manufacturers to their obligations under the CVAA, rather than singling out certain types of entities for more rigorous compliance. As TWC has explained in other contexts, requiring service providers to offer particular capabilities risks being largely meaningless if equipment manufacturers are not required to build the requisite functionality into their consumer devices.[17] That inclusive approach is particularly

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16 *See, e.g.*, 47 U.S.C. § 617(a)(1); *see also* NPRM ¶¶ 19-24 (seeking comment on various issues relating to the CVAA's application to equipment manufacturers).

17 *See, e.g.*, Comments of Time Warner Cable Inc., CS Docket No. 97-80, PP Docket No. 00-67, at 18-21 (filed Aug. 24, 2007) (explaining that in order to promote the commercial availability of navigation devices, equipment manufacturers should be obligated to produce the equipment at issue); Time Warner Entertainment Company, L.P., Petition for Reconsideration, CS Docket No. 97-80, at 11 (filed Aug. 14, 1998) ("Based on its extensive experience in this area, Time Warner can unequivocally state that the goals underlying Section 629 cannot be accomplished without the cooperation of all affected industries.").

important in connection with the advanced communications services on which the NPRM focuses. As the NPRM notes, ACS may involve a variety of different components that are produced and provided separately—for example, hardware and software applications—such that no one entity has control over all elements.[18] That fact reflects the evolution of the broadband marketplace more generally, in which multiple companies in different product markets may offer competitive alternatives—a structure that one commentator has termed the "broadband value circle."[19]

Consistent with the CVAA's expansive reach, the Commission should make industry collaboration a central tenet of its efforts to implement the CVAA. There are a number of policy areas today where such collaboration is warranted, and disabilities access is no exception. Indeed, as described above, TWC has pursued certain innovations in this context specifically as a result of discussions with the affected community. Enforcing the CVAA's requirements with respect to all relevant stakeholders will encourage such collaboration going forward.

III. THE COMMISSION SHOULD APPLY SECTION 255 UNIFORMLY TO ALL INTERCONNECTED VOIP SERVICES REGARDLESS OF WHEN THEY ARE INTRODUCED

The Commission extended the disability access obligations of Section 255 to interconnected VoIP providers several years ago,[20] and the industry has now undertaken significant efforts to ensure compliance with those rules. The NPRM notes that the CVAA did not intend to disrupt those efforts and thus expressly confirmed that services and devices subject to Section 255 as of the date of the CVAA's enactment, "including interconnected VoIP

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18 NPRM ¶¶ 15-16.

19 *See generally* Jonathan Sallet, *The Creation of Value: The Broadband Value Circle and Evolving Market Structures* (Apr. 4, 2011).

20 47 C.F.R. § 6.1(d).

service," would continue to be subject to those requirements.[21] However, an overly narrow reading of that grandfathering provision would result in preexisting interconnected VoIP services being subject to Section 255, while any such services introduced following the enactment of the CVAA (including multi-purpose offerings that include an interconnected VoIP component) would be subject to Section 716.

Such a dual regulatory approach would disserve the interests of people with disabilities as well as the CVAA's goals. First, subjecting new interconnected VoIP services to any new requirements under the CVAA—rather than extending Section 255 to them at the outset—would have the perverse result of leaving those services unregulated until the rules promulgated pursuant to the CVAA become effective, creating a gap in coverage. Second, maintaining a dual regime inevitably would cause confusion and uncertainty for consumers, service providers, and manufacturers. For instance, people with disabilities could face the prospect of adapting to an entirely new set of protections and methods every time they switch services. Meanwhile, providers that seek to upgrade their interconnected VoIP services that currently are subject to Section 255 would be forced to speculate about whether a particular enhancement or modification would cause the offering to become a new interconnected VoIP service subject to Section 716's accessibility regime, or whether it would remain subject to Section 255.

In a competitive and innovative marketplace in which new alternatives are emerging all the time, consumers should not be disadvantaged by availing themselves of new competitive options, and service providers should not be penalized for developing them. TWC thus encourages the Commission to interpret Section 716(f)'s grandfathering provision to mean that the CVAA's requirements will apply "solely to the extent that the device provides ACS that is

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[21] 47 U.S.C. § 617(f); *see also* NPRM ¶ 30.

not otherwise subject to Section 255."[22] Doing so would preserve stability and avoid disrupting innovation and the promise it offers to people with disabilities.

CONCLUSION

The NPRM represents an important step toward ensuring that the broadband marketplace meets the needs of everyone, including people with disabilities. TWC looks forward to working with the Commission and other stakeholders on this critical initiative.

Respectfully submitted,

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April 25, 2011

[22] NPRM ¶ 30.