

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

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| In the Matter of   | ) |                      |
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| Implementation of Sections 716 and 717 of<br>the Communications Act of 1934, as Enacted<br>by the Twenty-First Century Communications<br>and Video Accessibility Act of 2010 | ) | CG Docket No. 10-213 |
|  | ) |                      |
| Amendments to the Commission’s Rules<br>Implementing Sections 255 and 251(a)(2) of<br>the Communications Act of 1934, as Enacted<br>by the Telecommunications Act of 1996    | ) | WT Docket No. 96-198 |
|  | ) |                      |
| In the Matter of Accessible Mobile Phone<br>Options for People who are Blind, Deaf-<br>Blind, or Have Low Vision   | ) | CG Docket No. 10-145 |
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**COMMENTS OF ONSTAR, LLC**

OnStar, LLC (“OnStar”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) released by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.<sup>1</sup> In the *NPRM*, the Commission seeks comment on a variety of implementation issues related to the advanced communications services provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“The Accessibility Act”).<sup>2</sup>

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<sup>1</sup> *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*”).

<sup>2</sup> *See* 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 47 U.S.C.); *see also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010).

OnStar is encouraged by the steps taken by Congress and the Commission to increase access by people with disabilities to advanced communication services. As described below, OnStar has successfully adapted certain aspects of its technology in order to ensure that they are accessible to individuals who are hearing and speech impaired. OnStar's experience in creating accessibility solutions has demonstrated that it is essential that new requirements be crafted clearly, with an eye towards limiting uncertainty regarding what technologies are covered by the rules and how those rules are to be enforced. OnStar encourages the Commission to promulgate rules that stay within the scope intended by Congress and avoid requirements that have the effect of discouraging innovation in the communications industry. It should also provide a clear, streamlined waiver process and commit to acting expeditiously on waiver requests. The Commission should also limit new recordkeeping requirements and provide a grace period for compliance with achievability and recordkeeping requirements.

## **I. BACKGROUND ON ONSTAR SERVICES AND ACCESSIBILITY OFFERINGS**

OnStar is the largest telematics service provider in the nation, providing safety, security, and navigation services to more than 5.5 million subscribers in the U.S. OnStar's telematics services fall into two general categories: (1) non-telecommunications (*e.g.*, core safety and security services with automatic crash response ("ACR"), remote diagnostics, and turn-by-turn navigation); and (2) optional prepaid hands-free wireless calling ("HFC"), which enables subscribers who purchase prepaid minutes to make voice-operated phone calls from their vehicles.<sup>3</sup> These two service categories involve entirely separate offerings. They are not bundled, and subscribers do not need to purchase HFC minutes to utilize the core OnStar non-

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<sup>3</sup> *Hands-Free Calling*, OnStar, <http://www.onstar.com/web/portal/handsfreecalling> (last visited April 25, 2011).

telecommunications services. As such, only a portion of OnStar's services are regulated by the Commission.

In the past, OnStar's hardware was always embedded into the vehicle's infrastructure and was offered primarily on General Motors ("GM") vehicles. However, OnStar recently announced a new product offering called "OnStar for My Vehicle" or "OnStar FMV." This new product will enable millions of additional drivers to enjoy the core safety, security, and connectivity features of OnStar by replacing their vehicle's rearview mirror with an OnStar mirror.<sup>4</sup> Although the services will not be identical to OnStar's embedded product, both OnStar and OnStar FMV will offer core safety and security services as well as optional HFC. Like OnStar's embedded product, OnStar FMV (as currently being developed) will offer telecommunications and non-telecommunications based services.

The challenge of creating uniform rules for accessibility is not lost on OnStar. OnStar is a great example of a company that takes accessibility very seriously, independent of Commission rules. For example, OnStar has worked with the disabilities community for many years. OnStar employees also participate in an affinity group for people with disabilities comprised of employees of OnStar and its parent company, GM. This group allows OnStar to share new products and ideas internally, while simultaneously ensuring that OnStar is always considering the accessibility needs of the disabilities community at large. OnStar asks the Commission to be mindful of the unique challenges that it faces in developing accessibility solutions that are compatible with the automobile's unique safety requirements.

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<sup>4</sup> OnStar FMV is still in the development stage. OnStar FMV products and services will differ from the traditional OnStar product. *FMV*, OnStar, <http://www.onstar.com/web/portal/test/onstarfmv> (last visited April 25, 2011).

Where achievable, OnStar has developed accessibility solutions for its subscribers that are hearing or speech impaired. OnStar currently offers an embedded TTY solution for most 2007 or newer GM models. OnStar's TTY solution has allowed subscribers to place phone calls from within their vehicle by operating a TTY unit when the vehicle is stationary.<sup>5</sup> Although OnStar is not required to do so under the law, OnStar TTY also allows subscribers to communicate with specially trained OnStar TTY advisors for services other than HFC.<sup>6</sup> For OnStar FMV, OnStar has gone to great lengths to offer a new and improved TTY solution that is currently in the development and testing phase.<sup>7</sup>

## **II. THE COMMISSION MUST BALANCE THE NEED FOR INNOVATION WITH THE IMPORTANCE OF ACCESSIBILITY**

OnStar applauds the 111<sup>th</sup> Congress on its passage of the Accessibility Act. Congress has indicated clearly that increasing access to modern communication technologies by people with disabilities is a national priority. OnStar further acknowledges the incredible work the Commission has done to carry out these Congressional directives. Achieving accessibility is not a simple task, and implementation of the new law carries with it many layers of complexity. The Commission is tasked with the incredible burden of balancing the need to increase accessibility to modern technologies with its duty to safeguard innovation within the communications industry.

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<sup>5</sup> OnStar services must comply with all relevant State and Federal laws concerning driving safety. For these reasons, some of our accessibility solutions are not operational while the vehicle is in motion.

<sup>6</sup> OnStar's core telematics services (*i.e.*, excluding HFC) are not telecommunication services. As such, they are not subject to Section 255 and the Commission's accessibility rules.

<sup>7</sup> Because OnStar FMV products and services will differ from the traditional embedded OnStar product, TTY users of OnStar FMV may have access to different technology than TTY users of OnStar's traditional embedded product.

**A. The Commission Should Limit the Scope of Any New Accessibility Rules to Avoid Discouraging Future Innovation.**

In the *NPRM*, the Commission seeks comment on the scope of coverage under Section 716 of the Accessibility Act.<sup>8</sup> In resolving this question, the Commission should adhere to the express terms of the law and Congressional intent, and avoid an overly broad interpretation of its mandate. President Obama made it clear in his most recent State of Union Address that American innovation is the lynchpin of our nation’s long-term economic success. He stated, “[w]e know what it takes to compete for the jobs and industries of our time. We need to *out-innovate*, out-educate, and out-build the rest of the world . . . The first step in winning the future is encouraging American innovation.”<sup>9</sup> OnStar urges the Commission to heed President Obama’s words as it implements the Accessibility Act.

The first step towards balancing our nation’s need for innovation with the need for accessibility is to limit the scope of this rulemaking to reflect the Congressional intent of the Accessibility Act. Congress made it clear in Section 716 of the Accessibility Act that the accessibility requirements for advanced communication services are separate from the requirements for services that were already covered under Section 255:

Services and Equipment Subject to Section 255- The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010. Such services and equipment shall remain subject to the requirements of section 255.<sup>10</sup>

Therefore, the Commission should ensure that its new rules implementing the Accessibility Act do not apply to services that are covered by Section 255.

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<sup>8</sup> *NPRM* ¶ 14-66.

<sup>9</sup> State of the Union Address, President Barack Obama, <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address> (emphasis added) (last visited April 25, 2011).

<sup>10</sup> *See* 47 U.S.C. § 617(f).

The second step that the Commission must take is to limit the scope of its rules by more clearly defining the breadth of services that qualify as “advanced communication services.” The Commission’s proposed definitions of interconnected VoIP services, non-interconnected VoIP services, electronic messaging services, and interoperable video conferencing services fail to provide sufficient specificity and could discourage future innovation. For example, the Commission in the *NPRM* proposes to treat offerings with a purely incidental VoIP component as “non-interconnected” VoIP services, instead of indicating that it will exclude such services from Accessibility Act obligations.<sup>11</sup> This approach reduces clarity and increases regulatory uncertainty (and, therefore, compliance costs) for companies trying to bring innovative new services to the market. Maintaining the delicate balance of achieving accessibility without stifling innovation can only be accomplished by limiting the breadth of these definitions and staying true to the Congressional intent of the Accessibility Act. That intent was to clearly delineate between those services and technologies already captured by Section 255 and those technologies exclusively contemplated within the four categories above. Industry must know exactly what the Commission believes those four categories are so that, as it develops new technologies and services, it understands the legal and regulatory accessibility obligations that apply.

In the *NPRM*, the Commission also seeks comment on the appropriate waiver framework for services or equipment designed for purposes other than using advanced communications services.<sup>12</sup> Here too the Commission should provide as much clarity to industry as possible to avoid chilling future innovation. Specifically, the Commission should commit to waiving accessibility requirements for “classes” of service wherever possible (including when it

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<sup>11</sup> *NPRM* ¶ 32.

<sup>12</sup> *Id.* ¶¶ 52-60.

addresses waiver requests that may only be seeking relief for one particular equipment model). Moreover, if it is questionable whether a new product is designed primarily for purposes other than using advanced communications services, and a company files a waiver request in good faith out of an abundance of caution, any Accessibility Act requirements should be tolled until the Commission acts on the request (or, at a minimum, should be tolled while the request is pending). In addition, the Commission should delegate authority to the Consumer and Governmental Affairs Bureau to implement a streamlined process for acting on such waiver requests (*e.g.*, approving or denying properly filed requests within 30 days).

**B. The Commission Should Limit Its Proposed Recordkeeping Requirements and Allow a Reasonable Grace Period Before Achievability and Recordkeeping Requirements are Triggered.**

In the *NPRM*, the FCC proposes a series of burdensome new accessibility recordkeeping requirements.<sup>13</sup> Although some recordkeeping activities should be encouraged, they require considerable resources. Thus, the Commission should limit new recordkeeping requirements as much as possible, and provide a reasonable grace period before recordkeeping and achievability requirements are applicable to a company's particular product or service.

OnStar's advanced telematics solutions provide connectivity to millions of vehicle drivers. Its solutions are the best in the world because OnStar out-innovates its competition, focuses on its customers, and adapts to the ever-increasing challenges of safely weaving connectivity into the modern automobile.<sup>14</sup> Although OnStar's current product offerings do not qualify under the four technologies covered under the Accessibility Act, it is concerned about future advancements that have yet to be conceptualized. Moreover, OnStar's HFC service would

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<sup>13</sup> *Id.* ¶¶ 116-23.

<sup>14</sup> An example of this innovation is OnStar's recognition of the problem of distracted driving and development of OnStar HFC.

be subject to new accessibility-related requirements to the extent the Commission modifies its Section 255 rules. Thus, the Commission should craft its new Accessibility Act rules carefully to limit the additional recordkeeping burdens imposed.

The Commission's rules for recordkeeping and achievability also must be crafted to avoid stifling innovation. For example, the requirements should not be triggered for a particular product or service until the company producing the product or service has had the opportunity to evaluate its success. In many cases, a product that originates as one type of technology may later be configured in a manner that might trigger the Commission's rules. The very nature of technology is that it changes. It can morph as the customers' needs change and the notion of what is possible expands. OnStar develops technologies that can be utilized by a wide range of customers. As a matter of practicality, the development process rarely begins with a simple idea that is unchanged from conception through launch. It is absolutely necessary that OnStar be able to phase in technological advancements by utilizing tools such as pilot programs or multiple variations of the same product. It is impractical to undertake a complete recordkeeping process every time OnStar believes that one of its ideas might possibly fall under the definition of advanced communication service. Likewise, OnStar cannot devote engineering resources towards accessibility for every single product idea (few companies could afford to do this). If the Commission is serious about balancing innovation with accessibility, it must allow for a grace period – a reasonable amount of time for companies to develop and test services prior to triggering achievability and record keeping requirements.

### **III. CONCLUSION**

The communications industry is made up of a variety of companies that produce a myriad of products and services. Often, a company that does not develop telecommunications services as their primary business may still be concerned about accessibility solutions; OnStar deals with this challenge regularly. Some of its products and services are governed by Section 255, while others, including its core telematics services, are not. Building accessibility solutions for these services is not just technologically challenging, it can take time and be very costly.

To balance innovation with accessibility, the Commission should focus on limiting regulatory uncertainty, including by clearly defining the four categories of technologies and services covered by new accessibility requirements under the Accessibility Act. Once industry is absolutely certain how the Commission defines advanced communications services, the Commission should limit the scope of its rules by plainly stating that all other technologies do not, in any way, trigger the rules promulgated under the Accessibility Act. It should also ensure that its waiver framework further reduces regulatory uncertainty and brings additional clarity to companies developing innovative new products and services. Finally, the Commission should be mindful of the challenges in developing new technologies. To that end, a reasonable compliance grace period should be established so that OnStar and other companies have the opportunity to test new products in the market to determine take rate, profitability, and shelf life. Once this

reasonable time has passed, only then should the Commission's rules regarding achievability and record keeping be triggered.

Respectfully submitted,

**ONSTAR, LLC**

By: /s/ *Thomas Jeffers*  
Thomas Jeffers  
Vice President for Public Policy  
OnStar, LLC  
400 GM Renaissance Center  
P.O. Box 400  
Detroit, MI 48265-4000  
Telephone: (313) 665-2797  
E-mail: thomas.jeffers@onstar.com

Ari Q. Fitzgerald  
Mark W. Brennan  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
Telephone: (202) 637-5663  
E-mail: ari.fitzgerald@hoganlovells.com

*Its Attorneys*

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