

**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
	)	

**REPLY COMMENTS OF VERIZON<sup>1</sup> AND VERIZON WIRELESS**

Parties’ comments widely support the principle that the Commission’s rules implementing the Twenty-First Century Communications Video and Accessibility Act of 2010 (“CVAA”) should allow for industry flexibility, as intended by Congress. Specifically, many service providers and equipment manufacturers agree that there should be a two-year implementation timeline, that carriers should not be liable for third-party applications and service providers, and that interconnected VoIP services should continue to be regulated by Section 255, as the CVAA explicitly requires. As Verizon explained in its comments, the CVAA strikes a balance between accessibility and achievability, to which the Commission must adhere to as it implements the new law.

Several parties, however, filed comments that badly misconstrue the statute. These commenters ask the Commission to ignore Congress’s direction with respect to Section 1’s

---

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

exemption for liability from third parties, the definitions of interconnected VoIP and non-interconnected VoIP, and the statutory clause that applies the requirements of Section 255, and not the new CVAA requirements, to interconnected VoIP services. The Commission should reject these arguments and implement the statute as Congress intended.

**A. The Commission should affirm the CVAA’s broad exemption from liability for third party services and applications.**

As Verizon and many other commenters explained, open platforms are now fundamental characteristics of the mobile wireless ecosystem, enabling new advanced communications services providers to enter the marketplace with only minimal interaction with network operators like Verizon Wireless.<sup>2</sup> The comments reflect a broad industry consensus that the CVAA provides expansive liability protection for service providers and manufacturers from the acts and omissions of these third party service and application providers.<sup>3</sup> Many CVAA provisions compel this conclusion, including:

- Section 1’s express exemption from liability for the applications and services offered by third parties;
- Section 716(b)(1)’s applicability to covered services “offered by such provider ...”; and
- Section 716(b)(2)’s industry flexibility provisions giving service providers the *option* of using third party solutions for compliance.

---

<sup>2</sup> See Verizon Comments at 3; AT&T Comments at 8; Consumer Electronics Association (CEA) Comments at 7; Microsoft Comments at 12; T-Mobile Comments at 13-14; *see also* NetCoalition Comments at 5-6 (describing importance of third party liability limitations to “incentivizing and encouraging online free speech, the development of innovative applications and services”).

<sup>3</sup> See Verizon Comments at 3-4; AT&T Comments at 8-9; CEA Comments at 6-7; CTIA Comments at 9-12; NetCoalition Comments at 3-6; T-Mobile Comments at 13-14; Telecommunications Industry Association (TIA) Comments at 7-8; *see also* Microsoft Comments at 12-13; Voice on the Net (VON) Coalition Comments at 8-9.

Commission action requiring service providers or manufacturers to adopt new “gatekeeper” responsibilities is contrary to the CVAA’s express language and statutory structure.

Some commenters nevertheless would have the Commission eviscerate or blur this clear direction from Congress. The Rehabilitation Engineering Research Centers on Universal Interface & Information Technology Access and Telecommunications Access (“RERCs on IT and Telecom Access” or “Research Centers”) assert that a service provider or manufacturer should be responsible for a third party application or service that is “bundled or sold with a device/service,” that “incentivizes” a customer to use a particular third party product, or merely “markets its device or service in conjunction with the third-party add-on or identifies the third-party application as a reason to purchase its product ....”<sup>4</sup> Such an expansive interpretation of the term “offered” in Section 716(b) would be unwarranted. Given the myriad ways in which services and applications are marketed, it could subject wireless carriers to liability for the acts and omissions of parties with whom the companies currently have only a limited (if any) contractual relationship, imposing the very gatekeeper role that Congress sought to avoid.

The Telecommunications for the Deaf and Hard of Hearing, Inc., *et al* similarly appear to argue that the CVAA applies to “services and applications that merely provide access to an electronic messaging service, such as a broadband platform that provides an end user access to an HTML-based e-mail service” because ISPs could otherwise be “exempt ... from Section 716 obligations.”<sup>5</sup> This concern, however, is misplaced. By the CVAA’s terms, the “underlying

---

<sup>4</sup> RERCs on IT and Telecom Access Comments at 7.

<sup>5</sup> *See* Telecommunications for the Deaf and Hard of Hearing, Inc. *et al*. Comments at 6. These groups also argue that manufacturers’ obligations extend to “the applications that they install.” *Id.* at 3-4. While Verizon is not a manufacturer, insofar as the Telecommunications for the Deaf and Hard of Hearing, Inc. suggests that manufacturers or other parties could be liable for the applications and services offered by third parties, such a conclusion is contrary to Section 2(a) of the CVAA

HTML-based e-mail service” in the described scenario would be subject to the CVAA as a covered electronic messaging service, irrespective of whether the provider was also an ISP in its own right. Section 1 of the CVAA merely ensures that an unaffiliated ISP is not liable for an email service it does not control or offer to consumers.

The Commission should expressly reject these expansive interpretations of service providers’ and manufacturers’ CVAA obligations. These interpretations are inconsistent with Section 1 and would create uncertainty concerning service providers’ regulatory responsibilities and liability. That approach would undermine the benefits that all consumers – including those with disabilities – have enjoyed from the openness of today’s wireless marketplace. The Commission should instead affirm Section 1’s broad scope.

**B. The Commission cannot change the statutory definitions of “interconnected VoIP services” and “non-interconnected VoIP” services.**

The CVAA requires that the term “interconnected VoIP service” has the meaning given to it by Section 9.3 of the Commission’s rules,<sup>6</sup> as those rules may be amended. The Commission should adopt Section 9.3 as is for purposes of the CVAA, and the law does not give the Commission the flexibility to do otherwise.

Many regulatory requirements unrelated to disabilities access – including E911, universal service, CALEA, and others – rely on that definition. The Commission should use a single definition for interconnected VoIP service across the regulatory requirements that refer to it, to avoid the confusion and burden that would necessarily result if the Commission used different definitions for different rules. If at some point the Commission were to update the definition of interconnected VoIP services, it should do so through a single rulemaking proceeding, such as its ongoing *IP-Enabled Services* proceeding, to adopt a singled updated definition.

---

<sup>6</sup> 47 U.S.C. § 153(25). 47 C.F.R. § 9.3.

The Research Centers nevertheless would make two changes to the definition of interconnected VoIP services. First, the Research Centers argue that because at some point the PSTN will cease to exist, the definition should be modified to refer to the PSTN “or its successors.”<sup>7</sup> Even if the Research Centers are correct that the PSTN will someday be entirely replaced, no one knows what its successor may be, and what may seem like a minor semantic change could have serious, unintended effects with respect to the regulation of a variety of services, well beyond the accessibility context.

Similarly, the Research Centers are misguided in their attempt to change the statutory definition of “non-interconnected VoIP services.”<sup>8</sup> Here, the statute is even more explicit. Instead of cross-referencing a rule or other reference, the statute explicitly defines non-interconnected VoIP service as a service that “(i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and (ii) requires Internet protocol compatible customer premises equipment” and that “does not include any service that is an interconnected VoIP service.”<sup>9</sup> The Commission proposed to adopt this definition in its rules, and the CVAA gives it no other choice.

The Research Centers have proposed that the Commission define non-interconnected VoIP service as “any VoIP that is not interconnected VoIP.”<sup>10</sup> The Commission, however, has no authority to deviate from the clear statutory language. Congress gave the Commission a definition for non-interconnected VoIP service. The Commission must use it. The Research

---

<sup>7</sup> RERCs on IT and Telecom Access Comments at 8.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> 47 U.S.C. § 153(36).

<sup>10</sup> RERCs on IT and Telecom Access Comments at 9.

Centers' proposal, while succinct, ignores the clear language of the statute, and the Commission must reject it.

**C. Interconnected VoIP service is subject to Section 255 and therefore is exempt from the new CVAA requirements.**

The CVAA unambiguously provides that interconnected VoIP service is subject to the accessibility requirements of Section 255 and is exempt from the CVAA's new requirements:

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>11</sup>

The Commission noted in the *NPRM* that “this language clearly provides that interconnected VoIP equipment and services shall remain subject to Section 255.”<sup>12</sup> As Verizon and others commented, the new proposed Rule 8.2(d) captures Congress's intent to exclude interconnected VoIP from the new requirements, because it is already subject to the requirements of Section 255.

How the statute applies to multi-purpose devices is no less clear. The Commission sought comment on AT&T's proposal that “the Commission should subject multi-purpose devices to 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

---

<sup>11</sup> 47 U.S.C. §617(f).

<sup>12</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, ¶ 30 (2011) (“*NPRM*”).

communications service] that is not otherwise subject to Section 255.”<sup>13</sup> Verizon supported this proposal, which is consistent with Section 716(f) of the CVAA and Commission precedent.

The American Foundation for the Blind (AFB), however, would have the Commission find that if interconnected VoIP is part of a mixed-use device, then the entire device, including the interconnected VoIP equipment and services, should be subject to the requirements of Section 716(a)(1) of the CVAA. This approach simply cannot be squared with the statute, which explicitly states that interconnected VoIP is exempt from the requirements of Section 716. The AFB urges the Commission not to “persist in adopting an approach that divides accessibility considerations between Section 255 and 716.”<sup>14</sup> But the Commission is bound by the statute. And the statute reflects a careful balance between accessibility and achievability, taking the costs and benefits of accessibility into consideration. The CVAA cannot be read to allow the Commission to apply the requirements of Section 716 of the CVAA to interconnected VoIP. Instead, for mixed use devices, the Commission should adopt AT&T’s proposal.

#### **D. Conclusion**

The CVAA will ensure that millions of Americans with disabilities will have greater access to advanced communications services, but in implementing the statute, the Commission should follow Congress’s lead and balance goals of promoting accessibility and preserving continued innovation.

---

<sup>13</sup> *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).

<sup>14</sup> AFB Comments at 6.

Respectfully submitted,

By: /s/ Curtis L. Groves

Michael E. Glover, *Of Counsel*

Edward Shakin  
Curtis L. Groves  
VERIZON  
1320 North Courthouse Road  
9<sup>th</sup> Floor  
Arlington, VA 22201-2909  
(703) 351-3084

John T. Scott, III  
Michael Samsock  
VERIZON WIRELESS  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005  
(202) 589-3768

May 23, 2011

Attorneys for Verizon  
and Verizon Wireless