

**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) CG Docket No. 10-213
Twenty-First Century Communications and Video)
Accessibility Act of 2010)
)

To: Secretary, FCC
For: The Commission

**REPLY COMMENTS OF HAMILTON RELAY, INC. AND
PURPLE COMMUNICATIONS, INC.**

Hamilton Relay, Inc. (“Hamilton”) and Purple Communications, Inc. (“Purple”), providers of Internet Protocol Relay (“IP Relay”) services for deaf and hard of hearing people, hereby submit these reply comments in response to the Commission’s March 3, 2011 *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.¹

For the reasons set forth herein, Hamilton and Purple believe that IP Relay services are not covered by the statutory provisions which the Commission seeks to implement in this proceeding. In addition, even if IP Relay services were covered under those statutory provisions, the Commission’s proposed new complaint procedures would be redundant because the Commission has already adopted effective complaint procedures for all forms of relay, including IP Relay.

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, FCC 11-37 (rel. March 3, 2011) (“*NPRM*”).

I. Background

A. The CVAA

As an initial matter, Hamilton and Purple applaud the Commission’s efforts to implement the landmark accessibility requirements of the “Twenty-First Century Communications and Video Accessibility Act of 2010” (“CVAA”).² CVAA added two new sections — Sections 716 and 717 — to the Communications Act of 1934, as amended (the “Act”).³ Section 716 generally requires that “advanced communications services” (“ACS”) be accessible to persons with disabilities to the extent achievable and Section 717 requires that the Commission institute specific enforcement mechanisms to achieve that goal.

The CVAA defines ACS as “(A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service.”⁴ The third item, electronic messaging service, is of significance here.

An “electronic messaging service” is defined as any service that provides “real-time or near real-time non-voice messages in text form between individuals over communications networks.”⁵ In the *NPRM*, the Commission has proposed that IP Relay services “that otherwise fit the definition of ‘electronic messaging services’ are services subject to the requirements of

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.

³ *See* CVAA §§ 101, 104(a) (codified at 47 U.S.C. §§ 153(53), 617–18).

⁴ 47 U.S.C. § 153(l).

⁵ CVAA § 101 (codified at 47 U.S.C. § 153(56)).

Section 716.”⁶ Thus under the Commission’s approach, IP Relay providers, to the extent they are viewed as fitting the definition of providers of electronic messaging services, would be subject to the new enforcement procedures set forth in Section 717.

Section 717 requires the Commission to “establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255, 716, or 718, establish procedures for enforcement actions by the Commission with respect to such violations, and implement the recordkeeping obligations of paragraph (5) for manufacturers and providers subject to such sections.”⁷ Significantly, Section 225 of the Act, which governs all forms of telecommunications relay services, including IP Relay, is not referenced in Section 717.

B. IP Relay

The Commission’s rules currently define IP Relay service as “[a] telecommunications relay service that permits an individual with a hearing or speech disability to communicate in text using an Internet-Protocol-enabled device via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.”⁸ IP Relay providers, like all relay providers, are governed by the provisions of Subpart F of Part 64 of the Commission’s rules.⁹

An IP Relay call is virtually the same as a traditional relay call. The Communication Assistant (“CA”) “voices” (i.e., reads) everything that the person with the hearing disability types to the other party — and the CA also types everything that the other party says so that the person with the hearing disability can read the conversation on his or her screen or device.

⁶ *NPRM*, ¶ 33.

⁷ 47 U.S.C. § 618(a).

⁸ 47 C.F.R. § 64.601(a)(13).

⁹ 47 C.F.R. §§ 64.601-605.

Importantly, IP Relay is not a text-to-text service; a “voice” component by virtue of a CA is an inherent part of the call.

II. IP Relay Is A Separately Regulated Service and Should Not Be Considered an Electronic Messaging Service

While Hamilton and Purple support the accessibility goals of the CVAA, it is unclear how the inclusion of IP Relay services in the definition of “electronic messaging service” would advance the CVAA’s purposes or be supported by statutory interpretation principles.

A. The Plain Language of the CVAA Does Not Support the Inclusion of IP Relay as an Electronic Messaging Service

As noted above, Section 225 of the Act, which is the statutory provision that governs relay services including IP Relay, is not mentioned in Section 717. Nor are IP Relay services specifically included in the definition of electronic messaging service. In fact, IP relay service is mentioned nowhere in the CVAA or its legislative history.¹⁰ Accordingly, neither the plain language of the CVAA nor the legislative history of the CVAA support the Commission’s proposal to include IP Relay as an electronic messaging service. As a matter of statutory interpretation, therefore, the Commission should continue to regulate IP Relay under the provisions of Section 225 alone.

B. IP Relay is a Relay Service, Not an Electronic Messaging Service

Even if IP Relay could conceivably be considered a form of electronic messaging service, IP Relay does not meet the CVAA’s specific definition of an electronic messaging service. Section 101 of the CVAA defines an electronic messaging service as “non-voice messages in

¹⁰ See H.R. REP. NO. 111-563 and SEN. REP. NO. 111-386, *supra* note 8. New Section 715 of the Act, entitled Internet Protocol-Based Relay Services, does not address IP Relay. Rather, it provides that interconnected and non-interconnected Voice over Internet Protocol (“VoIP”) services must participate in and contribute to the TRS Fund. CVAA § 103(b) (codified at 47 U.S.C. § 616).

text form”¹¹ In contrast, as noted above, an IP Relay call inherently involves a voice component because of the CA’s presence on the call.¹² To the extent that IP Relay services have any electronic messaging component, that component is entirely incidental to the intended use of the relay system.

In addition, the unique characteristics of IP Relay service distinguish that service from generic “non-voice” electronic messaging services and other forms of advanced communications services. Indeed, IP Relay providers are already subject to significant mandatory minimum standards and complaint procedures under Part 64 of the Commission’s rules.¹³

Relay services have long been separately regulated pursuant to the Commission’s specific jurisdiction authorized by Section 225 of the Act, which was implemented by the Americans with Disabilities Act of 1990.¹⁴ IP relay service is a specific form of communication falling within the scope of the Act’s definition of “telecommunications relay services” (“TRS”).¹⁵ As newly defined by the CVAA, TRS encompasses a discrete type of communication in which at least one participant is deaf, hard-of-hearing, deaf-blind, or has a speech disability.¹⁶ Because

¹¹ CVAA § 101 (codified at 47 U.S.C. § 153(56)).

¹² The involvement of a CA is a critical component in a TRS call – without CA involvement, the call does not meet the definition of a TRS call. In contrast, an electronic messaging service communication could be any form of non-voice electronic communication because no CA is necessary.

¹³ *See* 47 C.F.R. §§ 64.601-605.

¹⁴ Pub. L. No. 101-336, § 401(a), 104 Stat. 336, 366 (1990).

¹⁵ *See* CVAA § 103(a) (codified at 47 U.S.C. § 225(a)).

¹⁶ *See id.*

the Commission has previously established that IP relay service is a form of TRS,¹⁷ IP Relay is covered by this new definition of TRS.

In contrast, a review of the legislative history of the CVAA makes clear that Congress intended “electronic messaging service” to target other types of services, such as e-mail, text messaging, and instant messaging.¹⁸ Given that IP Relay is already providing accessibility, it would appear to be unnecessary to include that service in measures designed to bring accessibility to the marketplace, particularly when IP Relay already includes both a “voice” and a text aspect on each call.

III. Should the Commission Determine that IP Relay Is a Form of Electronic Messaging Service, the Proposed New ACS Complaint Procedures Should Be Waived for IP Relay Providers

It has been established above that IP Relay is a distinct form of communication which is already regulated by the Commission under Part 64 rules. There is no need to include IP Relay under a new set of rules mandated by a law which does not mention IP Relay. Should the Commission nonetheless decide to include IP Relay service in the definition of electronic messaging service, the Commission should grant IP relay providers an indefinite waiver of the new complaint procedures proposed in the *NPRM*.

As shown above, Section 225 is not mentioned in the complaint procedures set forth in Section 717. Hamilton and Purple submit that if Congress had intended that the new complaint procedures should apply to IP Relay providers, Congress would have specifically included

¹⁷ *NPRM*, ¶ 33 n.90 (“IP Relay is a form of telecommunications relay services (“TRS”) under Section 225 of the Act”); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, ¶ 1 (2002) (“[W]e find that IP relay falls within the statutory definition of TRS”); *see also* 47 C.F.R. § 64.601(a)(13) (defining Internet protocol relay service).

¹⁸ *See* H.R. REP. NO. 111-563, at 23 (2010); SEN. REP. NO. 111-386, at 6 (2010).

Section 225 among the enumerated sections for which the CVAA directs the Commission to establish the new complaint procedures.¹⁹ In the absence of such a direct statutory mandate, there is no support in the record for a broad interpretation of “electronic messaging service” to include IP Relay.

In any event, the Commission already has formal and informal complaint procedures in place for IP Relay providers and providers of other forms of TRS.²⁰ For example, IP Relay providers are already asked to respond to complaints through the Enforcement Bureau’s Letter of Inquiry process. In addition, the Commission is currently considering a proposal to mandate federal certification for all IP Relay providers, which if adopted would create additional oversight of such entities.²¹

The Commission also has established other requirements for IP Relay providers concerning consumer complaints. Section 64.604(c)(1) of the Commission’s rules requires IP Relay providers to maintain consumer complaint logs and to submit summaries of such logs to the Commission annually.²² Thus, if any IP Relay provider has failed to address adequately complaints submitted by users of their IP relay services, the Commission has the relevant information needed to address any unresolved complaints on a case-by-case basis.

¹⁹ See CVAA § 104(a) (codified at 47 U.S.C. § 618(a)).

²⁰ See 47 C.F.R. §§ 64.604(c)(6).

²¹ *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 10-51, FCC 11-54, ¶ 96 (rel. Apr. 6, 2011).

²² See 47 C.F.R. §§ 64.604(c)(1). For example, Hamilton submitted its most recent complaint log summaries on June 28, 2010.

