

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**REPLY COMMENTS OF CONSUMER GROUPS IN RESPONSE TO NOTICE OF
PROPOSED RULEMAKING**

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., American Association of the Deaf-Blind, Deaf and Hard of Hearing Consumer Advocacy Network, and California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc. (collectively, the "Consumer Groups"), respectfully submit these reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") March 2, 2011 Notice of Proposed Rulemaking in the above-referenced proceedings.¹

¹ *In the Matter of Implementation of Section 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010* (CG Dkt. 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 Dkt No. 96-198), *In the Matter of Accessible Mobile Phone Options for People Who*

Congress had found that since 1996, the last time the communications laws were updated to provide access to communications devices by people with disabilities, the communications marketplace had undergone a fundamental transformation, driven by the growth in broadband and Internet-based and digital technologies.² “Through increased mobility and the use of data, the benefits of modern technology have profoundly altered our everyday lives, streamlining tasks and allowing mobile access to the Internet and a diverse menu of applications and services. ... Nevertheless, the extraordinary benefits of these technological advances are often still not accessible to individuals with disabilities.”³ Against this backdrop, the “Twenty-First Century Communications and Video Programming Act of 2010,” was enacted “to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”⁴

Apparently, many of the commenters have forgotten this. Instead, they contend, for example, that the Commission should wait two years to have companies comply with the CVAA’s requirements, grant broad and permanent waivers to reduce the burden on industry, allow a single product amongst a diverse product line to satisfy a manufacturer’s obligations, eliminate any compliance responsibility if a company relies on third parties, and construe the statutory requirements in so narrow a fashion as to render them trivial. The Consumer Groups are at a loss as to how such recommendations address the Congressional findings that if current and emerging technologies are not accessible to the disabled community, the disproportionately

Are Blind, Deaf-Blind, or Have Low Vision (CG Dkt. No. 10-145), Notice of Proposed Rulemaking, FCC 11-37 (rel. Mar. 3, 2011) (“*NPRM*”).

² See S. Rep. No. 111-386, at 1 (2010) (“*Senate Report*”); H.R. Rep. No. 111-563, at 19 (2010) (“*House Report*”).

³ See *Senate Report*, at 1; *House Report*, at 19.

⁴ See *Senate Report*, at 1; *House Report*, at 19.

higher rates of unemployment and poverty suffered by them may increase.⁵ Certainly, any curtailment in the scope and timing of the CVAA will only exacerbate the problems faced every day by the disabled community. The Commission should ignore efforts to do so and retain the integrity of the CVAA.

I. “Flexibility” Cannot Be Used To Curtail Obligations Under the CVAA

Many commenters to this proceeding have asserted that manufacturers and service providers must have flexibility to incorporate accessibility features in some but not all devices and services.⁶ Others request that the Commission be flexible in granting blanket and broad waivers of its rules requiring accessibility.⁷ Still others seek the Commission to be flexible as to when its rules under the CVAA should start to apply.⁸

The Consumer Groups agree that “flexibility” on the part of the Commission, as envisioned by the CVAA, is an overall positive quality that the Commission should embrace. Nevertheless, “flexibility” cannot be employed to the detriment of other statutory obligations.

The Commission must recognize that for every “flexible” decision allowing a manufacturer or service provider the option of not making a product or service accessible, the Commission restricts the opportunity of persons with disabilities from being able to otherwise use or acquire such products or services. Such decisions cannot be made in a vacuum and have real world consequences. Accordingly, flexibility should, at most, remain with the Commission. Allowing manufacturers and service providers, who have resisted such efforts in the past, to

⁵ See *Senate Report*, at 1-2; *House Report*, at 19.

⁶ See, e.g., National Cable & Telecommunications Association Comments at 5; Telecommunications Industry Association Comments at 4.

⁷ See, e.g., T-Mobile USA, Inc. Comments at 6.

⁸ See, e.g., Microsoft Corporation Comments at 15.

decide what products or services should comply with the CVAA leads inexorably back to the state of the market prior to the CVAA – recognized by Congress as requiring correction.

II. Compliance Liability Should Extend to Those With CVAA Obligations

The Consumer Groups note that some commenters seek to limit manufacturers’ and service providers’ liability with respect to third-party applications used to satisfy obligations under the CVAA. Those commenters argue that because such third parties are, in fact, third parties, manufacturers and service providers cannot control either their services or their prices.⁹

Such arguments are nonsensical and contrary to the CVAA itself. Section 716 requires that equipment manufacturers and service providers of advanced communications services “shall ensure” that their offerings “be accessible to and usable by individuals with disabilities, unless doing so is not achievable.”¹⁰ Congress granted those entities an exception and provided the industry with flexibility to use third parties to provide such services.¹¹ Congress, however, never shifted the obligation of CVAA compliance to those third parties. Accordingly, the manufacturers and services providers retain their obligation to ensure that their products and services are accessible to individuals with disabilities and should not be permitted to disclaim any responsibility related to the actions or inactions of third parties. If a manufacturer or service provider opts to use third parties, then they must obtain those services under sufficient conditions to ensure compliance. Accordingly, the Commission cannot allow manufacturers and service providers to rely upon third-party entities to satisfy CVAA obligations but disclaim any responsibility for their compliance.

⁹ See, e.g., T-Mobile USA, Inc. Comments at 11.

¹⁰ 47 U.S.C. § 716 (a) & (b).

¹¹ *Id.*

III. Interpretation of CVAA Requirements Should Be Broad to Accomplish its Goal

The Consumer Groups contend that requests of the Commission to narrowly interpret the CVAA are unwarranted and premature. Instead, the Consumer Groups advocate that the Commission adopt the more inclusive recommendations initially set forth by the Consumer Group's initial comments.

Take, for example, a comment made regarding the use by manufacturers and service providers of third-party solutions to comply with the CVAA. The Telecommunications Industry Association suggests that the Commission should not adopt a requirement that third-party solutions have to be operable by a person with a disability and that it is sufficient if a person without a disability can perform the setup or maintenance of the solution.¹² If the Consumer Groups had argued that instructions for updates to wireless handsets could only be available in Braille or that all voicemail could only be transmitted in French, everyone would have called such suggestions ludicrous. Yet TIA contends that such requirements are "unnecessary" as the manufacturer and service provider obligations already require their products to be "accessible to and usable by" persons with disabilities. Maybe TIA is correct if the CVAA provisions were interpreted broadly, but one might argue that if it such a requirement was already contained within the statutory obligations, what is TIA actually objecting to?

This goes to the Consumer Groups' overall point. The Commission cannot narrowly interpret the CVAA and its requirements because such interpretations will be used to constrain the availability and accessibility of products and services to the disabled community – an already divided community from the majority, non-disabled population. Instead, the Commission must

¹² Telecommunication Industry Association ("TIA") Comments at 21.

broadly interpret the mandate of the CVAA to include as much of the disabled population as possible until such time as experience warrants to the contrary.

IV. Sunset Provisions for Services Must Not Be Mandated.

The Consumer Groups also note that the TTY sunset provisions should not be mandated as a large segment of the deaf-blind community continues to be dependent on telebraille TTY devices. The elimination of such services would cut off their ability to communicate in a functionally equivalent manner. Accordingly, the Consumer Groups contend that such services need to be supported and that any provisions related to such services must reflect the current state of demand for those services and the availability of reasonable alternatives to telebraille TTY service.

Respectfully submitted,

/s/

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