

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

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In the Matter of)	CG Docket No. 10-213
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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)	
)	WT Docket No. 96-198
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)	
)	CG Docket No. 10-145
In the Matter of Accessible Mobile Phone)	
Options for People who are Blind, Deaf-Blind,)	
or Have Low Vision)	

REPLY COMMENTS
of the American Association of People with Disabilities (AAPD)

The American Association of People with Disabilities (AAPD)¹ thanks the Commission for the opportunity to offer some reply comments in this very important rulemaking to implement key provisions of the Twenty-First Century Communications and Video Accessibility Act (“21stCVAA”). We agree with numerous others that the 21st CVAA is the most significant disability and technology legislation to be enacted since the Americans with Disabilities Act (ADA) as it impacts different sectors of the technology and communications ecosystem, requires accessibility and usability of current and emerging technologies and redresses past inequities.

¹ The American Association of People with Disabilities (AAPD), the country's largest cross-disability membership organization, organizes the disability community to be a powerful voice for change – politically, economically, and socially. AAPD was founded in 1995 to help unite the diverse community of people with disabilities, including their family, friends and supporters, and to be a national voice for change in implementing the goals of the Americans with Disabilities Act (ADA).

We reiterate the points made by the Commission and others that state the fundamental purpose of the 21stCVAA is to ensure that over 50 million Americans with disabilities are able to fully utilize advanced communications services. Additionally, we reiterate that Section 716 of the 21stCVAA broadens the scope of covered services and equipment beyond that covered by Section 255 and requires a higher standard of achievement for covered entities. This means that the Commission should ensure the scope and scale of covered products and services are not limited simply to the has-beens of the marketplace but reaches to new products and services coming down the pipeline.

We note Onstar's statement about the rapidly changing technological environment: "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."² This is what consumers with disabilities are faced with every day as products and services enter the marketplace. Our consumer expectation is that these products will be accessible and usable and that is the intent of the new law.

In general, AAPD found the Comments oppressive, insensitive and discouraging. The innumerable requests for waivers, expanding of exemptions, narrowing of definitions, scaling back the scope, delaying of regulations, and watering down of enforcement and recordkeeping obligations were burdensome on the reader. The numerous statements that accessibility and usability requirements are stifling and slowing of innovation and similar points made ad nauseam were in many cases not only depressing but once again demonstrated to us a global lack of commitment by many to address the needs of consumers with disabilities and a colossal failure

² Onstar, April 26, 2011, Page 8.

to exercise leadership by some. AAPD has selected just a few points to be made in our Reply Comments, as follows:

Scope

We are especially concerned with any narrowing of the scope of what is ACS. As so well described in the Comments of AFB³, the provisions of Section 716 first establish the accessibility principle, offer two approaches to compliance, and only then go on to describe when compliance is justified through compatibility with specialized peripherals or CPE. The 21st CVAA ensures that accessibility is the requirement for manufacturers and for service providers. The requirement of Section 716 describes the two methods how a covered entity can comply with the law. That is, by building in accessibility or through reliance on third party options available to consumers at no more than nominal additional cost. If these are not achievable then, and only then, accessibility can be reached by ensuring that equipment and services are compatible with existing peripherals or specialized CPE, unless doing so is not achievable. This distinction is critical because, all too often, such specialized devices or software may in fact be extremely expensive or burdensome for consumers.

Any regulations adopted by the Commission should be careful to preserve the statute's emphasis that an entity's election to make products accessible via the compatibility route means that the company must ensure that products are compatible with an available third party add-on. Without this structure and emphasis entities can evade the obligation.

Effectiveness Date

While AAPD agrees with Verizon that the Commission should establish a date certain for when new advanced communications services must comply we disagree that the effective date of the new rules should be at least two years after the new rules take effect to account for the

³ AFB, April 26, 2011, Page 2.

product pipeline.⁴ AAPD recommends an effective date of one year. Most of the companies in this industry are fully aware of this rulemaking and can already begin the process of making advanced communications products and services accessible. To push the effectiveness date out further fails consumers with disabilities and sends a message that “delay is okay,” has a chilling effect on the expectations of consumers with disabilities that we too can participate in the fruits of the new technologies and stifles our ability to make use of advanced communications products and services.

Primary Purpose

AAPD disagrees with TechAmerica who “believes that Section 716(a) only applies to equipment with a primary purpose of offering ACS.”⁵ Likewise, we disagree with TIA who “believes that the Commission should explicitly exclude services and equipment that are designed for purposes other than using ACS from its interpretation of the ACS definitions in Section 716(a).”⁶ Like Onstar’s comment above, more and more we are seeing morphing of technology and convergence of equipment and services. Consumers expect ACS – or pieces of ACS, e.g., electronic messaging – as part of the product or service to also be designed and developed to be accessible to and usable by people with disabilities. The attempt to limit accessibility and usability requirements to ACS primary purpose products and services is once again another attempt to stifle the use of new products and services by the community of people with disabilities and will result, once again, in people with disabilities being left behind and left out as new products emerge in the marketplace.

Waivers

⁴ Verizon, April 25, 2011, Page 2.

⁵ TechAmerica, April 26, 2011, Page 3.

⁶ Telecommunications Industry Association (TIA), April 26, 2011, Page 13.

We also disagree with TechAmerica's recommendation that the "Commission should utilize the waiver process freely for ACS" and that "Indeed, all equipment and services not primarily designed or marketed for ACS should be granted a waiver."⁷ TechAmerica astounds us also with the recommendation that "Waivers should not be restricted to a specific time period but should remain in effect so long as the conditions under which they were granted remain materially unchanged."⁸

No! Liberal use of permanent waivers by the FCC for ACS will create confusion for consumers with disabilities who will not know what is or what isn't accessible in the marketplace. Consumers with disabilities are expecting – as is the intent of the law – to find 21st century communications products and services accessible and usable and as the marketplace changes. And these will include ACS products and services as well as products and services that first began with only a certain number of features and functions and to which ACS is later added. In light of our comments above in regard to consumers with disabilities being left out and left behind if ACS is not broadly interpreted, we find it outrageous that TechAmerica asks for automatic and permanent waivers from accessibility requirements for services not primarily designed or marketed for ACS. Such waivers will hinder the use of such products and services by people with disabilities, stifle the inclusion of people with disabilities into the workforce and otherwise create burdens on consumers with disabilities attempting to live lives of independence and productivity. Likewise, we are puzzled by TIA who says that "The Commission should also not set any arbitrary length of time period for the duration of waivers..."⁹ To create the very certainty that TIA and others would like, waivers should be set for a limited amount of time, if allowed at all.

⁷ Tech America, April 25, 2011, Page 5.

⁸ Idem.

⁹ TIA, April 25, 2011, page 14.

Codification of Accessibility Features

AAPD asserts that the Act provides massive – in fact excessive -- amounts of flexibility to manufacturers and services providers as they innovate for accessibility and usability.¹⁰ In light of the generous flexibility granted by our U.S. Congress, we urge the Commission to identify “specific accessibility features that are currently available” and “to provide clarity on what accessibility features should be universally deployed, if achievable”¹¹ in any rulemaking. Such specifics help consumers with disabilities with their expectations and help them find the products and services that are in fact accessible. Furthermore, we disagree with TIA who avers that this identification and clarification of accessibility features should only occur through the yet-to-be-established clearinghouse.¹² To wait for a yet unfunded government clearinghouse of information to be created for the purpose of sharing accessibility solutions looks like another attempt to delay reaching accessibility solutions. Consumers with disabilities want the products and services with accessibility at the same time as other consumers, not after some more dithering and delaying inflicted on them by trade associations who have already got the flexibility they need to encourage their member companies to do what’s expected and needed.

Limited Exemption at 716(i)

AAPD disagrees with the NetCoalition who thinks that “... a product or service that incorporates ACS functionality that is tailored to a discrete industry segment, or that has virtually all of its customer relationships with other businesses or enterprises but a relatively small number of individuals, should fit under this exemption.”¹³ AAPD does not believe this type of scenario should have an exemption as who is to say -- in this scenario -- what is a “relatively small

¹⁰ For instance, Section 617 (j).

¹¹ NPRM at Paragraph 76.

¹² TIA, Page 18.

¹³ NetCoalition, April 25, 2011, Page 7.

number of individuals”, as compared to some other number of individuals, such as a relatively large number of individuals. Are we talking about a few dozen people? Thousands? A percentage of the U.S. population? And all of whom may have a disability now, or later.

Furthermore, an ACS product or service “tailored to a discrete industry segment” could involve millions of individuals in a particular sector and would therefore shut out thousands or “a relatively large number” of people with disabilities working in the sector. Likewise, the basis that “has virtually all of its customer relationships with other businesses or enterprises” sounds like an attempt to carve out a definition for this exemption that goes excessively beyond what was intended. It’s clear in the House Report that Congress intended the scope of this exemption to be **narrow** and to apply only to “customized equipment and services offered to businesses or other enterprise customers, rather than to equipment and services ‘used by members of the general public.’”¹⁴ AAPD does not believe that “customized” solutions include whole industry segments nor business-to-business relationships as exemptions. To do so would gut the intent of the law.

Complaints

AAPD disagrees strongly with TechAmerica’s request that “the Commission should encourage, if not require, potential complainants to first notify the defendant manufacturer or provider that it intends to file a complaint.”¹⁵ There should be no requirement to ask consumers to first notify the company in regard to complaints. This can be burdensome on consumers with disabilities as too often the complaint process at a company is a hard-to-find 800 number, or a website with a standardized form that simply bounces back some sort of automatic “Thank You For Your Concern” and “We’ll Get Back to You Later” type of answer. In the case of call centers, if the consumer has persisted enough to locate a real human being who answers,

¹⁴ NPRM at ¶ 50 (citing H.R. Rep. No. 111-563, at 26 (2010)).

¹⁵ Tech America, Page 10.

consumer service representatives' unfamiliarity with accessibility and disability issues¹⁶ is the laughingstock of disability community jokes, e.g., asking a blind person "read aloud to me what is says on your screen," or telling a deaf person "we have the product instructions in Braille," and similar confounds. In some cases consumers will complain to companies, and others just to the FCC, and in some cases to both. Many will not complain at all for lack of knowing who to turn to. Many will not buy the new products and services as they won't know what's accessible. Many will suffer in their workplaces and other settings using clunky work-arounds or left out of what everyone is using due to the continuing lack of accessibility and other barriers. And, from our point of view, it would be nice if AAPD no longer received these complaints. Likewise, there should be no standing requirement – including no requirement to have purchased something – in order to file any type of complaint. Any such strictures just add further hindrances and burdens to consumers with disabilities who just want a product or service to work for them.

Conclusion

AAPD urges the Commission to scope the regulations broadly, make the effectiveness date soon, ensure that ACS will always be accessible to people with disabilities no matter where found, to use waiver and exemption authority exceedingly sparingly, to codify known accessibility solutions, and to structure a very consumer friendly complaint process. We look to the various industry sectors to step up to the plate and provide leadership in the accessibility and usability of ACS as promised by this legislation.

Sincerely,

Jenifer Simpson

Jenifer Simpson

¹⁶ And often grossly already in violation of existing Commission regulations at 47 CFR, Sec. 255, 6.11 (a)(3) and 7.11 (a)(3).

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