



October 3, 2011

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RE: Notice of *Ex Parte* Meeting  
**CG Docket No. 10-213; WT Docket No. 96-198; CG Docket No. 10-145**

Dear Ms. Dortch:

On Thursday, September 29, 2011, the Coalition of Organizations for Accessible Technology (“COAT”), represented by, Jenifer Simpson, Senior Director for Government Affairs, American Association of People with Disabilities (AAPD); Eric Bridges, Director of Advocacy and Governmental Affairs, American Council of the Blind (ACB); Andrew Phillips, Policy Attorney, National Association of the Deaf (NAD), met with Angela E. Giancarlo, Chief of Staff & Senior Legal Advisor to Commissioner McDowell to discuss the above referenced matters.

We expressed our concerns that the Commission’s possible approach to 21st Century Communications and Video Accessibility Act (CVAA) applicability to certain software products or services may be too narrow to accord with the letter and spirit of the CVAA. It is possible that the proposed rules for Section 716 of the CVAA will leave certain valuable software products uncovered by the law. We explained that software is expressly covered in Section 716(a) where it requires the manufacturers “of equipment used for advanced communications services, including end user equipment, network equipment, and software” to ensure that such equipment is accessible to and usable by individuals with disabilities.<sup>1</sup> In the language above, “software” is listed as one of three kinds of equipment used for advanced communications services and that this is evident by the comma prior to “and.” Moreover, we pointed out that Section 716(a) is written very similarly to Section 255, and thus Section 255 should provide guidance in

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<sup>1</sup> 47 U.S.C. § 617(a) Manufacturing.

interpreting 716(a).<sup>2</sup> Section 255 uses the term “equipment” similarly to Section 716(a) and the Commission has interpreted “equipment” under Section 255 to include software.<sup>3</sup>

Further, we explained that if the law was viewed somehow to be ambiguous, then we need to look to the intent and purpose of the law. And in this case, the law’s intent and purpose is to make advanced communications services (ACS) accessible. Software is a major part of ACS, especially in the future as technology evolves primarily through software rather than hardware. If the rules were to remain as currently proposed, then there is an incentive to find ways to provide ACS without a service provider. We already have decentralized peer to peer systems that can establish point-to-point connections. This peer to peer concept could become the model for the communications of the future and such services providers may not be covered under the CVAA if the interpretation is too narrow.

Under Section 716(a) we believe that the wording of 716(a) along with CVAA’s purpose of achieving usability and accessibility for people with disabilities, as well as 716(a)’s similarities to Section 255, provides proof that stand-alone software must be covered under 716(a).

We also expressed concerns about the implications of postponing rules defining interoperable video conferencing service. For interoperable video conferencing service, we stressed the need to interpret the rules as a mandate for interoperability or that ACS must be built with the goal of interoperability. However, if such a requirement is not found, then interoperability should be interpreted reasonably and following the intent of the law. The definition of interoperable needs to focus on the ability of two products to communicate with one another via video and not be defined in a way that renders this part of the law moot or make it easy to deliberately make products non-interoperable. Moreover, we addressed the serious problems with a proposed definition of “interoperable” which requires: inter-platform, inter-network, and inter-provider.

Additionally, we expressed disappointment with the possibility of setting the phase-in period for complaints at two years. We explained that this is too long a wait for accessible technology and raised concerns about the possibility of a 2-year term being extended in the future. Further, complaints are a useful avenue of information for engineers and product managers to identify what is missing from their products. The law

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<sup>2</sup> See 47 U.S.C. § 255(b) Manufacturing. “ A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.”

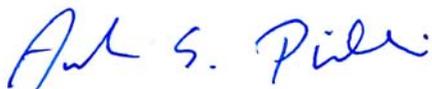
<sup>3</sup> See Federal Communications Commission, *Guide: Disabled Persons' Telecommunications Access - Section 255*, [www.fcc.gov/guides/disabled-persons-telecommunications-access-section-255](http://www.fcc.gov/guides/disabled-persons-telecommunications-access-section-255). “The FCC’s rules cover all hardware and software telephone network equipment and customer premises equipment (CPE).”; See also *In the Matter of Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996. Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities* (WT Docket No. 96-198), Report and Order and Further Notice of Inquiry, FCC 99-181 (rel. Sept. 29, 1999)(“R&O”) at paragraphs 81 – 88. Explaining that software is covered by the definitions for “telecommunications equipment” and “customer premises equipment,” including stand-alone software.

does not require accessibility to be built into products, but rather an upgrade can be released that will make the product accessible. We expressed a willingness to agree on a 1-year phase in period starting when the rules are published, but after one year, there should be no waiting period before a complaint can be filed.

Further, we emphasized the need for a rigid waiver process that is only for products currently being developed and that are not currently on the market. Points were made about how the Commission could become overwhelmed with waiver requests and end up not responding within the time required, thus automatic waivers would be granted and fearfully, for large categorical waivers. The proposed guidance for waiver review in regard to other purposes for devices was proposed as (a) “how the general public is using the device” and (b) “how the product is being marketed.” We explained these give too much new discretion to the Commission and are not found in the statute.

Concerns were also shared about “nominal costs” being defined in a way that would leave many products uncovered. We explained that people with disabilities are experiencing the highest unemployment rates of any minority groups and the costs of making an ACS accessible can often be more than the cost of the product itself. We do not have a suggested measure for “nominal costs,” but this consideration must be the exception and not the norm. Further, this consideration must be consistent with the intent of the law which is to promote accessibility and usability of ACS for people with disabilities. Finally, we shared some concerns with how small business entities may be defined and that some companies may split in order to avoid coverage of the law. This may have a serious effect on accessibility for people with disabilities who live in rural areas and should not be excluded from the benefits of the CVAA.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew S. Phillips".

Andrew S. Phillips, Esq.  
Policy Attorney  
National Association of the Deaf

cc: Angela E. Giancarlo, Commissioner McDowell's Office