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**Congress of the United States
Washington, DC 20515**

September 14, 2011

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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street
Washington, DC 20554

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Dear Chairman Genachowski:

Federal Communications Commission
Office of the Secretary

As the Federal Communications Commission (FCC) implements the 21st Century Communications and Video Accessibility Act of 2010 (CVAA), we are writing to urge the FCC to adopt regulations that ensure individuals with disabilities are able to fully utilize communications services and equipment and better access video programming consistent with the intent of the Act. The CVAA is intended to expand access to the current and emerging devices, services and applications of the communications and video ecosystems for individuals with disabilities in order to enable full participation in everyday life. As you know, Congress has previously amended the Communications Act to increase access to communications and video devices and services by people with disabilities. For example, Congress required that people who are deaf or hard of hearing must be afforded the capability to make telephone calls, mandated closed captioning of television shows for individuals who are deaf, and directed, in the 1996 Telecommunications Act, that all telephone equipment, including telephones, telephone calls, call waiting, speed dialing, caller ID and related services be accessible to Americans with disabilities.

While these reforms greatly expanded inclusion and opportunities for the community of individuals with disabilities, the rapid technological transformation since the 1996 Act, the pervasiveness of these new technologies across 21st century civic and commercial life and the concomitant imperative of ensuring access by individuals with disabilities to these new devices and services were the impetus for the CVAA. Accordingly, we believe the Commission's regulations implementing the CVAA should be broad in scope, reject delay or dilution of the Act's provisions and aim to increase accessibility in support of full participation in society by individuals with disabilities. We provide below our comments in an effort to clarify and communicate congressional intent as the Commission prepares to promulgate the implementing regulations.

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1. The regulatory scope and compliance deadlines should support full, timely utilization by consumers with disabilities

In response to requests for exemptions and extended compliance periods, the Commission should be guided by the central purpose of the CVAA – to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming. Such full utilization is critical for widening inclusion in educational, professional and cultural opportunities that otherwise would be out of reach for the more than 54 million Americans with disabilities. If current and emerging devices, services and applications are not accessible to this community, the disproportionately higher rates of unemployment and poverty that already affect this group likely would increase. Narrowing the scope or delaying industry compliance with the CVAA would undermine the effectiveness of the Act. Therefore, we urge the Commission to establish clear tests for the evaluation of waiver petitions in the regulations. Additionally, we encourage the Commission to establish a high bar for granting such requests in order to retain the integrity and reflect the purpose of the CVAA.

2. Accessibility should be the rule, with only limited exceptions

The regulations should ensure that consumers with disabilities can maximize their utilization of advanced communications services and devices. The CVAA mandates that service providers and manufacturers must meet Section 716's accessibility requirements "unless [such requirements] are not achievable." In the statutory language, Congress intentionally established the presumption that all services and equipment covered by the Act would be accessible, with exceptions only when the service provider or manufacturer can demonstrate, in a specific instance, that accessibility is not achievable. The Commission's regulations should reflect this fundamental presumption, ensuring that services and equipment that are not accessible are truly the exception rather than the rule.

The CVAA defines "achievable" as meaning "with reasonable effort or expense, as determined by the Commission." In determining whether the requirements of a provision are achievable, the Commission will consider four factors: (1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question. (2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies. (3) The type of operations of the manufacturer or provider. (4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. We urge the Commission to apply the achievability test on a product-by-product basis, consistent with the statute's usage in the first two factors of "*specific equipment or service in question*" (emphasis added). It is not sufficient for a manufacturer or provider to merely designate one product or service or a subset of products or services in a line as accessible. All such products or services within the CVAA's scope must be accessible unless doing so is not achievable pursuant to the four-part test in the Act.

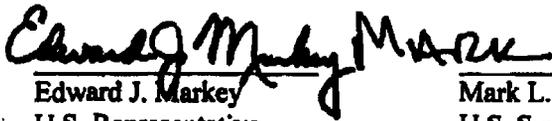
A determination that accessibility is not achievable should not necessarily remain static, since the sophistication of devices and services within the scope of the Act likely will continue to rapidly advance, potentially making accessibility subsequently achievable. Accordingly, the initial determination that it is not achievable to make a specific device or service accessible should be subject to review when technological or market developments arise. When new versions of previously inaccessible software, services or equipment are developed, they should be subjected to the same achievable test mandated in the law. The Commission's implementing regulations should ensure that the mere fact accessibility was not achievable for a previous version or model does not exempt such new version or model from a *de novo* achievable test if warranted.

3. Accessibility through third-party peripherals should not be a burden for consumers

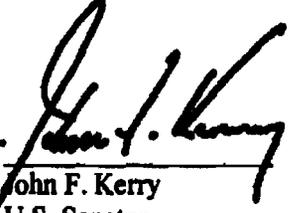
The CVAA enables a manufacturer to choose either to build accessibility into its product by design or rely upon third party peripherals. However, this flexibility does not provide manufacturers the authority to jettison their accessibility obligations or foist the responsibility for finding accessibility solutions onto consumers with disabilities. If a manufacturer decides not to incorporate accessibility into its product, it may engage third parties to provide an accessibility solution. The user experience should be seamless regardless of the manufacturer's choice. If a manufacturer chooses to use a third party application, peripheral device, software, hardware, or customer premises equipment, the Act specifies that the third-party device shall be available to the consumer at nominal cost and individuals with disabilities can access it. The Commission should not permit manufacturers and service providers that choose to utilize third parties to satisfy their CVAA obligations if they do not also ensure compliance with the Act's accessibility requirements.

A generation ago, Americans with disabilities were unable to access many buildings, elevators and other parts of our country's physical infrastructure. In the 21st century, access to our nation's invisible infrastructure – spectrum – is essential for utilizing wireless broadband and the panoply of devices and services that are the entree to full participation in society. The CVAA was intended to enable access to such services and equipment. We commend the Commission for its ongoing efforts to implement the CVAA, and we look forward to working with the Commission on these important matters.

Sincerely,


Edward J. Markey
U.S. Representative


Mark L. Pryor
U.S. Senator


John F. Kerry
U.S. Senator


Henry A. Waxman
U.S. Representative


Anna G. Eshoo
U.S. Representative