

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

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

To: The Commission

COMMENTS OF MICROSOFT CORPORATION

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SUMMARY

As the Commission continues the process of turning the provisions of the CVAA governing ACS equipment and services into practical rules that will guide industry and promote accessibility, Microsoft urges the Commission to maintain its approach of “advanc[ing] the accessibility of ACS in a manner that is consistent with [its] objectives of promoting investment and innovation, while being mindful of the potential burden on industry accomplishing the goal while also encouraging innovation and not stifling technological enhancements.” Microsoft agrees that the Commission’s rules should provide meaningful, practical guidance to industry on how best to meet the statutory obligations without creating barriers to innovation by locking in particular technologies. Further, the Commission should carefully define relevant terminology with reference to the usage common in industry and established usage in law. Consistent with these goals, the Commission specifically should:

- Implement Section 718 in the same targeted, flexible manner in which it implemented Section 716 by applying Section 718’s requirements only to the parties identified in the statute and focusing on the objective of accessibility rather than mandating the means by which accessibility should be attained;
- Define “interoperable” consistent with its common usage and the CVAA’s purposes to mean able to engage in video conferencing across a wide range of platforms, networks, and providers’ services; and offer appropriate guidance consistent with technical feasibility and general achievability on the meaning of accessibility in the context of video conferencing services;
- Act within the authority of the CVAA and refrain from pursuing regulation of video mail and other non real-time video services that are not ACS;
- Refrain from incorporating into the definition of peripheral devices the phrase “electronically mediated services,” which does not have a consistently established meaning in industry or law;

- Refrain from articulating performance objectives until the Architectural and Transportation Barriers Compliance Board issues its forthcoming guidelines; and
- Adopt the standards recommended by ITI as safe harbors.

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Microsoft Corporation (“Microsoft”) appreciates the complexity of implementing the provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA” or “Act”) that govern advanced communications services (“ACS”), and it welcomes the opportunity to provide further comment on the issues identified in the above-captioned Further Notice of Proposed Rulemaking (“*FNPRM*”).¹ Microsoft has long been committed to ensuring that people with disabilities can enjoy the same unfettered, meaningful access to communications technologies as other Americans. We have been pleased to be an active participant in the Commission’s process as it weighs the difficult technical and policy

¹ See 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, CG Docket No. 10-213, WT Docket No. 96-168, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151 (rel. Oct. 7, 2011) [hereinafter *FNPRM*].

questions involved in promulgating rules pursuant to the CVAA, and Microsoft commends the Commission on its thoughtful and balanced approach thus far. As the Commission continues its work to implement this historic legislation, it should maintain its commitment to flexible, workable rules that strike a careful balance between accessibility and innovation.

I. CONSISTENT WITH ITS IMPLEMENTATION OF SECTION 716, THE COMMISSION SHOULD CONFIRM THAT SECTION 718 APPLIES TO A LIMITED SCOPE OF ENTITIES AND PERMITS FLEXIBILITY IN DEVELOPING ACCESSIBILITY

The Commission should implement Section 718 in the same carefully targeted, flexible manner in which it has implemented Section 716. Specifically, it should clarify that Section 718 applies only to a limited scope of entities and that the CVAA permits regulated entities flexibility in ensuring that browsers are accessible.

In the *FNPRM*, the Commission correctly recognizes that Section 718 constitutes a “carved out . . . exception” to Section 716 that delays the effective date of accessibility rules for Internet browsers built into mobile telephones.² In reaching this conclusion, the Commission correctly identifies the unique challenges involved in achieving accessibility for individuals who are blind or have low vision in mobile phone browsers.³ Given the relationship between Section 716 and 718 as well as the unique challenges in the mobile browser context, the Commission must not impose rules under Section 718 that are more onerous than those it has promulgated under Section 716.

First, as it did with respect to Section 716, the Commission should recognize the limited scope of entities to which Section 718 obligations apply. Pursuant to Section 718, the

² *Id.* ¶ 293.

³ *Id.*

Commission may only apply section 718 obligations to a “manufacturer of a telephone used with public mobile services” and a “provider of mobile service.”⁴ Section 718 employs the same definition of “public mobile services” as used in Section 710 of the Communications Act, which defines the term to include “air-to-ground radiotelephone services, cellular radio telecommunications services, offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communication services covered by part 22 of title 47 of the Code of Federal Regulations.”⁵ Thus consistent with this provision, the Commission has no authority to regulate anyone that is not a manufacturer of mobile telephones or provider of mobile service.

Nonetheless, as in the analogous Section 716(a) context, the Commission’s rules “will foster industry collaboration” between regulated entities and software makers, ensuring that browsers that are included by manufactures or mobile service providers in mobile telephones are accessible.⁶ As the Commission noted in its analogous determination with respect to the scope of Section 716(a), the targeted scope mandated by Congress assists consumers in identifying the party ultimately responsible for accessibility and facilitates cost-effective compliance.⁷

Second, and consistent with the flexible approach adopted with respect to Section 716, the Commission should not impose any rigid mandate regarding how regulated entities must render covered browsers accessible. More specifically, contrary to Code Factory’s suggestion, the Commission should not require or imply the need for an accessibility API on mobile

⁴ 47 U.S.C. § 619(a).

⁵ 47 U.S.C. §§ 610(b)(4)(B), 619(a).

⁶ *FNPRM*, ¶ 70.

⁷ *Id.* ¶¶ 70, 73.

devices.⁸ Given the dynamic nature of this technology, it remains important that the Commission focuses its efforts on defining the objective it would like industry to achieve, rather than mandating the means for achieving those objectives. Such an approach will deliver accessibility solutions while enabling industry to innovate.

Microsoft recognizes that in many cases accessibility APIs are helpful for compatibility with assistive technologies, but the decision to make an API available should rest with the software developer, not the Commission. For example, as discussed further below, in appropriate contexts we would welcome safe harbor status for appropriate accessibility APIs.⁹ However, a more prescriptive approach to accessibility APIs in the Section 718 context, whether in the form of a mandate or otherwise, is not warranted. Rather than impose a potentially calcifying mandate, the Commission should focus on outcomes and allow regulated entities to reach agreements with their partners on the best method to achieve those objectives. For instance, one regulated entity may choose to ensure that its included browser may use speech output, while another entity may ensure its browser employs an API to make the browser compatible with a third-party assistive technology that provides a speech output function. The House Report specifically states that for each of the obligations pursuant to Sections 716-18, the House “intends that the Commission afford manufacturers and service providers as much flexibility as possible, so long as each does everything that is achievable in accordance with the achievability factors.”¹⁰ Instead of imposing a one-size-fits-all solution, which would be contrary to Congress’s intent, the Commission should permit regulated entities flexibility to

⁸ *Id.* ¶ 297.

⁹ *See infra* Sec. VI.

¹⁰ H.R. Rep. No. 111-563, at 24 (2010).

reach agreements with their business partners to render pre-installed browsers accessible in the manner they deem most appropriate.

II. THE COMMISSION SHOULD DEFINE “INTEROPERABLE” TO MEAN ABLE TO ENGAGE ACROSS A WIDE RANGE OF PLATFORMS, NETWORKS, AND PROVIDERS’ SERVICES

The Report and Order preceding the *FNPRM* correctly concludes that the CVAA’s use of the term “interoperable” in the phrase “interoperable video conferencing service” does not grant the Commission authority to mandate interoperability in video conferencing.¹¹ It follows, therefore, that the *FNPRM*’s effort to define “interoperable” cannot have the consequence of mandating interoperability. Instead, its only purpose can be to complete the Commission’s effort to define the full scope of advanced communications services subject to regulation. Pursuant to that goal, Microsoft recommends that in defining “interoperable” the Commission use the industry consensus definition of “able to function inter-platform, inter-network, and inter-provider” as a starting point. However, because the prefix “inter” may be ambiguous concerning the scope and nature of interoperability necessary to be regulated, the Commission should further clarify that “interoperable” means able to engage in video conferencing across a wide range of platforms, networks, and providers’ services. Additionally, as discussed below, because video conferencing services already provide both audio and visual functionality, the Commission should clarify that a video conferencing service is accessible if an alternative modality of communication is available within the service to a disabled individual. Lastly, the Commission should bear in mind that consumer video conferencing services, like Skype, Messenger and others, are necessarily different than enterprise services and do not have

¹¹ *FNPRM*, ¶ 48.

the same capabilities and so achieving an expansive definition of interoperable would not be possible in the near future.

A. The Commission Should Define “Interoperable” to Mean Able to Engage in Video Conferencing Across a Wide Range of Platforms, Networks, and Providers’ Services

In the *FNPRM*, the Commission offers three possible definitions of “interoperable.”¹² Among the Commission’s proposals, Microsoft prefers the first option listed, which defines “interoperable” to mean “able to function inter-platform, inter-network, and inter-provider.” As the *FNPRM* states, this definition has the support of many industry participants.¹³ We agree that communicating between and across multiple platforms, networks, and providers is the hallmark of interoperability. Thus, for instance, if a user may communicate only among users of a single provider’s video conferencing service, such as if users of Windows Messenger and Skype were able to communicate with one another, then that service is not interoperable.

While the phrase “inter-platform, inter-network, and inter-provider” offers a valuable starting point, it retains some of the ambiguity of the word “interoperable” used alone. Like the underlying word “interoperable,” the phrase “inter-platform, inter-network, and inter-provider” is unclear in its use of the prefix “inter.” The words “platform, network, and provider” identify rightly the categories of interoperation necessary to meet the statutory criteria, but the word “inter” fails to define the kind of interoperation or the degree of interoperation necessary for the accessibility requirements to apply. Specifically, the prefix “inter” does not define the nature of communications across platforms, networks, or providers the service must provide to qualify for regulation; nor does it provide guidance on how wide a scope of platforms, networks,

¹² *Id.* ¶ 303.

¹³ *Id.* ¶ 301 & n.770.

or providers a service must provide communication across to meet the statutory criteria for regulation. Absent guidance from the Commission, industry will lack certainty on when their services have crossed the threshold to reach interoperability within the meaning of the CVAA.

To resolve these ambiguities, we urge the Commission to define “interoperable” to mean “able to engage in video conferencing across a wide range of platforms, networks, and providers’ services.” This definition resolves both ambiguities in the word “inter.” First, it makes explicit that the communication between platforms, networks, and providers entails video conferencing. Thus, for instance, where an individual using a video conferencing service may communicate to users of other platforms solely using voice or text and not video, that service is not an “interoperable video conferencing” service within the terms of the statute. This requirement is consistent with a common-sense interpretation of the statutory phrase and ensures that the Commission’s regulations remain within the limits permitted by the CVAA.

Second, we propose that the accessibility requirements should apply only when users are able to communicate across a wide range of platforms, networks, and providers. This definition ensures that the video conferencing service in question will have advanced -- both in terms of technology and recognition within the industry -- sufficiently to justify imposing accessibility requirements. Where for reasons of technological or business limitations a service does not yet provide communication across a wide range of platforms, networks, and providers, then accessibility requirements should not yet be imposed. However, once a service provides communications across a wide range of platforms, networks, and providers, then the Commission should require that service to be accessible.

We note the Commission’s concern that defining interoperable with reference to communication across platforms, networks, and providers would “exclude virtually all existing

video conferencing services and equipment from the accessibility requirements of Section 716”.¹⁴ While that may be true today, the original NPRM in this proceeding notes that industry efforts to address interoperability challenges in video conferencing are ongoing, and Microsoft is an active participant in those efforts as a founding member of the Unified Communications Interoperability Forum (UCIF), an alliance dedicated to enabling standards-based, inter-vendor unified communications interoperability.¹⁵ In enacting the forward-looking CVAA, Congress employed a forward-looking scope, acknowledging the likely pace of industry progress.¹⁶

B. A Video Conferencing Service Is Accessible If It Provides an Alternative Modality of Communication to a Person with a Disability

In addition to defining “interoperable,” the Commission should clarify what is considered accessible in the unique video conferencing services context. A light regulatory touch with respect to video conferencing services and a recognition of solutions that may be technically feasible is uniquely appropriate. Video conferencing services, especially those for the consumer market, in many ways already are accessible because video conferencing, by its

¹⁴ *Id.* ¶ 301.

¹⁵ 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, CG Docket No. 10-213, WT Docket No. 96-168, CG Docket No. 10-145, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, 3174, ¶ 110 & n.326 (rel. Mar. 3, 2011); <http://ucif.org>.

¹⁶ Contrary to the Commission’s analysis, in interpreting Congress’s intent regarding the term “interoperable,” it is inappropriate to prescribe to Congress full knowledge of the state of technology at the present date. Instead, in enacting a statute in October 2010 with a deadline for promulgating rules under Section 716 of a year later, *see* 47 U.S.C. §§ 617 (a)(1) and (b)(1), Congress employed the term “interoperable” in a manner that incorporated a reasonable guess about the likely state of technology in the near future. Given the fast-changing world of real-time Internet multimedia services and the progress that industry was then and is now making toward interoperability, it would have been reasonable for Congress to anticipate that assigning “interoperable” its most natural and common definition would, over time, ensure that video conferencing services would be accessible.

very nature, already allows voice, text, and visual communications. As the Senate Report notes, video conferencing services “may, by themselves, be accessibility solutions.”¹⁷

Because video conferencing services already are multimedia by nature, the Commission should clarify that an interoperable video conferencing service is accessible if an alternative modality of communication is available. Thus, if one modality of communication is not appropriate due to a disability, and another modality is available as part of the video conferencing service, then the service in question should be deemed accessible. For instance, if an individual who is impaired in speech may communicate via sign language and/or text using the service, then the service should be considered accessible.¹⁸

III. CONSISTENT WITH THE LIMITED SCOPE OF THE CVAA, THE COMMISSION SHOULD NOT REGULATE VIDEO MAIL OR OTHER NON-REAL TIME VIDEO FEATURES

The Commission should not use this proceeding to impose regulations on video mail or similar non-real time video services. As the Commission has already correctly concluded, video mail and other non-real-time video features are not video conferencing services because they do not meet the definition of “real-time” video communications.¹⁹ Nor should the Commission exercise its ancillary jurisdiction over such services. In enacting the CVAA, Congress carefully balanced the need for accessibility requirements against the freedom to innovate. It would not be appropriate for the FCC to undo Congress’s carefully developed balance. Moreover, the lack of mandated video mail accessibility does not undermine the accessibility and usability of interoperable video conferencing functions. Congress reasonably

¹⁷ See S. Rep. No. 111-386, at 6 (2010) (“Senate Report”).

¹⁸ The Commission should evaluate alternative modalities of communication based on the functionality they permit rather than requiring video conferencing services to employ any specific protocols to be deemed accessible.

¹⁹ See 47 U.S.C. § 153(59); FNPRM, ¶ 307.

concluded that regulating real-time video conferencing is especially important because absent accessibility features, individuals with disabilities may be unable to participate in real-time conversations conducted through video conferencing services, and no alternative external to the video conferencing service can compensate fully for the exclusion. In contrast, in a non-real time circumstance, even if a given video mail system is not accessible, the CVAA and other accessibility laws, along with industry efforts, ensure that individuals with disabilities will have multiple accessible methods by which to communicate such a message.

IV. THE COMMISSION SHOULD NOT DEFINE PERIPHERAL DEVICES TO INCLUDE “ELECTRONICALLY MEDIATED SERVICES” BECAUSE THE PHRASE LACKS AN ESTABLISHED MEANING

The *FNPRM* asks whether the Commission should implement the IT and Telecom RERCs’ proposal to expand the definition of peripheral devices to include devices employed in connection with “electronically mediated services.”²⁰ We urge the Commission not to adopt the proposal because “electronically mediated services” does not have a well-established meaning. It is not a widely-used term in industry or in common parlance.²¹ Nor does the phrase have an established legal definition. The term is not used in the CVAA nor in the remainder of the Communications Act; in fact, it is not used anywhere in the entire U.S. Code or Code of Federal Regulations. It is telling that neither the IT and Telecom RERC comments proposing the use of the term, nor the *FNPRM*, are able to offer a definition.²² Even if a commenter offers a proposed definition, such a definition would be untested and would create unknown consequences for the

²⁰ *FNPRM*, ¶ 309.

²¹ For instance, as of February 8, 2012, in a search for the phrase “electronically mediated services” in the Bing and Google Web search engines, the *FNPRM* is the third and first ranked result, respectively, suggesting that the few widely-referenced sources have used the term prior to the *FNPRM* itself.

²² See IT & Telecom RERC Comments at 27-28; *FNPRM*, ¶ 309.

Commission’s carefully-developed rules as well as uncertainty and expense for industry. Thus, due to the inability to foresee the consequences of adopting the phrase, the Commission should not define peripheral devices to include “electronically mediated services.”

V. THE COMMISSION SHOULD REFRAIN FROM DEVELOPING PERFORMANCE OBJECTIVES UNTIL THE ACCESS BOARD ISSUES RENEWED GUIDELINES

Microsoft continues to urge the Commission to refrain from articulating performance objectives until the Architectural and Transportation Barriers Compliance Board (the “Access Board”) issues its forthcoming guidelines that will be released under Section 508 of the Rehabilitation Act.²³ As we explained previously, the Access Board has deep experience with accessibility and assistive technology matters, and consistency between the Section 508 guidelines and the Section 716 performance objectives is necessary because there is significant overlap between the equipment and services that will be subject to the Section 716 requirements and those that are subject to the Section 508 criteria for government procurement. Thus, in the interest of obtaining full information and avoiding disparate standards, the Commission should continue to defer any decision on performance objectives until the Access Board’s proceeding is complete.

VI. ADOPTION OF THE SAFE HARBOR TECHNICAL STANDARDS RECOMMENDED BY ITI WILL PROVIDE INDUSTRY WITH USEFUL GUIDANCE SO LONG AS THE SAFE HARBORS DO NOT BECOME MANDATES

The *FNPRM* “seek[s] comment on whether certain safe harbor technical standards can further th[e] goal” of “various components in the ACS architecture working together to

²³ Microsoft NPRM Comments at 13-14.

achieve accessibility.”²⁴ Microsoft supports the establishment of the technical standards identified in paragraph 312 of the *FNPRM* as safe harbors. We agree with ITI that manufacturers should be permitted to ensure compliance by “programmatically exposing the ACS user interface using one or more established APIs and specifications which support the applicable provisions in ISO/IEC 13066-1:2011.”²⁵ We also support safe harbor status for the other technical standards referenced, including the W3C/WAI Web Content Accessibility Guidelines, Version 2.0, and Section 508 of the Rehabilitation Act of 1973, as amended. Establishing these standards as safe harbors would assist individuals with disabilities because they would gain additional certainty that peripherals and specialized CPE they employ can be used across services. Further, by providing guidance and facilitating coordination, safe harbor technical standards such as those identified above may reduce the costs of compliance for equipment manufacturers and their business partners.

As discussed above and in our comments in the Commission’s parallel proceeding implementing the closed captioning requirements of title II of the CVAA, Microsoft stated that when the Commission establishes a safe harbor it should be based on standards adopted in open, transparent processes by recognized industry standard-setting organizations.²⁶ As the Commission correctly concluded in that proceeding, safe harbor guidance “provide[s] certainty while enabling the industry to continue to innovate and permit[s] parties to . . . use an alternative

²⁴ *FNPRM*, ¶ 311.

²⁵ *Id.*

²⁶ *See supra* Sec. I; Comments of Microsoft Corporation, Closed Captioning of Internet-Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, at 16-17 (Oct. 18, 2011); Reply Comments of Microsoft Corporation, Closed Captioning of Internet-Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, at 4-6 (Nov. 1, 2011).

standard.”²⁷ However, as other commenters have cautioned previously, and consistent with the goals of flexibility and innovation, it is important that safe harbors are not converted into rigid requirements, whether through explicit mandates or an unwillingness to recognize any alternatives to a safe harbor standard as compliant.²⁸ The Senate Report states that “[w]hen prescribing regulations under this section, it is the Committee’s intention that the Commission refrain from imposing mandatory technical standards upon [ACS] equipment manufacturers and/or [ACS] providers.”²⁹ By recognizing that compliance with safe harbors is not the sole path to compliance, the Commission may ensure that safe harbors provide valuable guidance while accounting for the possibility that technology will outpace a specific safe harbor standard.

* * *

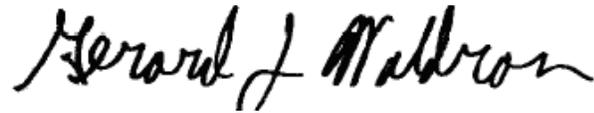
Consistent with Microsoft’s longstanding commitment to accessibility, we hope that these comments are helpful as the Commission works to complete its implementation of the CVAA’s requirements. We will continue to work with the Commission, representatives of the disability community, and other industry leaders to adopt meaningful and realistic provisions for increasing accessibility for people with disabilities.

²⁷ Closed Captioning of Internet-Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, at ¶ 126, Report and Order, FCC 12-9 (rel. Jan. 13, 2012)

²⁸ See FNPRM, ¶ 215 & n. 590 (identifying commenters).

²⁹ Senate Report at 7.

Respectfully submitted,



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