

**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
	)	

**COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®**

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**COMMENTS OF CTIA-THE WIRELESS ASSOCIATION**

CTIA-The Wireless Association® (“CTIA”)<sup>1/</sup> submits these comments in response to the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission” or “FCC”) seeking additional comment on issues associated with the implementation of the advanced communications provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA” or the “Act”).<sup>2/</sup> In implementing rules in this proceeding, the Commission should:

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<sup>1/</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2/</sup> *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, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (“*Report & Order*” or “*Further Notice*”); *Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.).

- Adopt a “user-centric” approach to the definition of “interoperable video conferencing services.” As “interoperable” video conferencing services do not yet exist, such an approach would promote the development of interoperable video conferencing service, encourage accessibility issues to be considered before the service is deployed in the market, and offer clarity to the industry and the public about what services are covered, as those services are introduced to the market.
- Refrain from regulating the “non-real-time” features of interoperable video conferencing service, because the Commission lacks jurisdiction to do so.
- Reject the IT and Telecom RERC’s proposal to expand the definition of what is meant by the prohibition on “impair[ing] or impede[ing] the accessibility” of information content.
- Refrain from adopting a particular technical approach to making mobile Internet browsers accessible to the blind or visually impaired, instead leaving industry flexibility today and in the future to choose the manner in which they ensure that users have the ability to use accessibility features.
- Adopt a permanent, self-executing exemption for small businesses from the requirements of the CVAA.

## **INTRODUCTION AND SUMMARY**

The issues raised in the *Further Notice* highlight the challenges of promoting, or not impeding, the development of innovative products and services while ensuring that regulatory oversight adequately addresses consumer needs and does not hinder industry innovation. Today, the wireless industry is working to address many of the concerns and issues raised in the *Further Notice*, and is dedicated to meeting the Commission’s challenge to consider accessibility issues early in the process of developing new services and products. To create an environment that continues to encourage such innovation and creativity, CTIA proposes the following recommendations in response to the *Further Notice*:

*First*, the Commission should adopt a “user-centric” approach that defines an “interoperable” video conferencing service as one that allows users to make real-time video conference calls through a “common platform” – one that uses a uniform resource identifier (“URI”) such as a telephone number, resulting in a platform for video calls analogous to the

Public Switched Telephone Network (“PSTN”) – in that a video call can be made regardless of the network, device or provider used to initiate or receive the video communication. Adopting a user-centric approach would provide much-needed clarity to users and industry because video conferencing services that are offered as “interoperable” and so accessible would be easy to identify, would be consistent with Commission’s treatment of other developing services, and would permit CTIA and its member companies to address accessibility at the outset of the development of interoperable video conferencing services, before this wholly new service is deployed. CTIA and its member companies are working towards developing a set of guidelines that would move towards creating such a platform and would promote interoperable video conferencing services, and are committed to considering the accessibility of such services as part of the development of those guidelines.

*Second*, the Commission should refrain from regulating non-real-time features and functions that may be offered with interoperable video conferencing service, such as video mail. Covered entities may choose to make non-real-time add-ons to video conferencing services accessible voluntarily, accessibility in such functions and features may occur naturally when an interoperable video conferencing service is accessible, or such functions and features may be accessibility solutions in their own right. However, the FCC cannot use ancillary authority to subject them to Section 716.

*Third*, the Commission must reject the IT and Telecom RERC’s proposal to broaden the definition of what it means to “impair or impede the accessibility” to information content. The Commission should adhere to the definition it created in the *Report and Order*, under which it considers a covered entity to have impaired or impeded access to accessibility content only when the entity takes affirmative, deliberate action to impede or impair access to accessibility services.

*Fourth*, the Commission should refrain from adopting a particular technological approach or solution with respect to requiring mobile Internet browsers to be accessible to the blind or visually impaired. Industry should be permitted flexibility today and in the future to choose the manner in which they ensure that accessibility features meet the needs of the blind or visually impaired. Adopting any particular technological solution or approach would freeze technology and innovation in place, to the detriment of blind or visually impaired consumers.

*Fifth*, the Commission should adopt a permanent, self-executing small entity exemption for small business and should use Small Business Administration (“SBA”) standards to define such entities.

*Finally*, the Commission should refrain from adopting an overly proscriptive approach to emerging services and covered entity obligations. In particular, the Commission should not expand the definition of peripheral devices to include software and electronically mediated devices (especially given the lack of information on what is meant by the latter term), should not undertake the burdensome process of creating entirely new performance objectives in lieu of adjusting the U.S. Access Board’s guidelines, and should not create a separate recordkeeping and enforcement regime to govern Section 718, because the rules it adopted for Section 716 should reasonably apply to both sections.

**I. THE COMMISSION SHOULD TAKE A USER-CENTRIC APPROACH TO DEFINING “INTEROPERABLE VIDEO CONFERENCING SERVICE”**

Rather than adopt any of its three proposed definitions of “interoperable,”<sup>3/</sup> each of which is overly vague, complicated to interpret and implement, and would not allow users or service providers to easily identify what video conferencing services are covered, the Commission

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<sup>3/</sup> *Further Notice* ¶ 303.

should define “interoperable” in a manner that reflects a user-centric, forward-looking, technologically-neutral approach.

Specifically, and as described in greater detail below, the Commission should define an “interoperable” video conferencing service as one that offers users the ability to make real-time video conference calls through a common platform – one that uses a URI such as a telephone number, resulting in a platform for video calls analogous to the PSTN – regardless of the network, device or provider used to initiate or receive the video communication. The wireless industry is today actively considering such a common platform, and will simultaneously strive to meet the Commission’s challenge to incorporate accessibility from the outset of the platform’s debut as a natural feature.<sup>4/</sup> Rather than attempting to create rules for a service that does not yet exist, CTIA’s approach will provide the necessary certainty and flexibility to allow interoperable video conferencing services to naturally develop as an accessibility solution for persons with disabilities.

**A. Adopting A User-Centric Approach Fulfills Congress’s Intent That The CVAA Be Forward-Looking.**

In defining “interoperable” video conferencing services, it is important that the Commission establish a definition that allows users, manufacturers, service providers and the Commission to easily identify what services are covered and what it means for such services to be accessible. As CTIA has expressed in other proceedings implementing the CVAA,<sup>5/</sup>

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<sup>4/</sup> *Id.* ¶ 305 (asking industry to “consider accessibility alongside the technical requirements and standards that may be needed to achieve interoperability, so that as interoperable video conferencing services and equipment come into existence, they are also accessible.”).

<sup>5/</sup> *See, e.g.,* Comments of CTIA-The Wireless Association®, CG Docket No. 10-213 (filed Nov. 22, 2010) at 14 (“*CTIA Nov. 2010 Comments*”) (“Establishing easily comprehensible rules that clearly delineate the extent of each participant’s responsibilities to make their products or services accessible . . . will allow each participant to appropriately plan and develop their products and services accordingly, minimizing later disputes.”).

providing clarity allows all affected entities to plan for accessibility and reduce the time and expense associated with disputes over what is covered.

Congress intended for the CVAA to be a technologically forward-looking statute. Knowing the speed at which new services and technologies arise in the marketplace, and wanting emerging services to be available to all consumers, Congress created definitions meant to capture services and technologies as they developed in the market. “Interoperable video conferencing service” is such a definition. While the Commission must recognize that no such services meet this definition today, Congress intended for the Commission to put rules in place so that as the industry develops interoperable video conferencing services, accessibility is considered at the outset of market availability. Adopting CTIA’s proposed user-centric approach would meet this goal.

In the wireless ecosystem, video conferencing services are still developing as services or applications that are not yet widely available or interoperable. For the wireless industry, a dynamic video conferencing market is a work in progress with great potential. A few of the proprietary video communication applications that are already available in the wireless market include:

- **Facetime:** A video conferencing application that allows users of supported Apple devices, such as the iPhone4, to place and receive video calls, but only if the other user also has an Apple device with the Facetime application.<sup>6/</sup>
- **Fuze Meeting:** A multi-party video conferencing application offered to small and medium-sized businesses and enterprise customers on the Verizon Wireless 4G LTE network.<sup>7/</sup>

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<sup>6/</sup> See Antone Gonsalves, *Apple Unveils iPhone 4 with Video Calling*, INFORMATION WEEK (June 8, 2010), at <http://www.informationweek.com/news/hardware/handheld/225402213>.

<sup>7/</sup> See Verizon News Release, *Verizon Wireless And FuzeBox Bring HD Video Conferencing And Real-Time Visual Collaboration Over 4G To Mobile Devices And Tablets* (Sept. 14, 2011) at <http://news.verizonwireless.com/news/2011/09/pr2011-09-12a.html>.

- **myTouch Video Calling:** T-Mobile customers can video chat using their myTouch devices with other T-Mobile customers that have myTouch.<sup>8/</sup>

Because video conferencing services and applications are still developing (and indeed, their economic viability is uncertain),<sup>9/</sup> “interoperability” among such services has not yet been achieved. Video conferencing services currently rely on a broad array of standards including 3GPP<sup>10/</sup> and others.<sup>11/</sup> Nonetheless, it is appropriate for the Commission to consider interoperability issues now, so that when “interoperable” video conferencing services emerge, accessibility is considered as part of their development, and the regulations governing that accessibility will be in place. Establishing rules that encourage interoperability, so that a viable,

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<sup>8/</sup> See T-Mobile Release, *New T-Mobile myTouch Delivers High-Definition Video Connections and Lightning Fast 4G Speeds* (Oct. 4, 2010), at <http://newsroom.t-mobile.com/articles/t-mobile-mytouch-4g-speeds-high-definition>.

<sup>9/</sup> See KBZ Blogging Team, *Mobile Video Conferencing Expands Through Next Generation Smartphones*, KBZ COMMUNICATIONS (Feb. 11, 2011), at <http://blog.kbz.com/2011/01/mobile-video-conferencing-expands-through-next-generation-smartphones/> (observing that while two of the greatest limitations to the development of portable video conferencing – hardware and bandwidth – have been in large part overcome by advances in phone and network design, “only a few software applications have emerged which have been able to take advantage” of these advancements and that “[t]he mobile video conferencing segment of the industry is still taking baby steps,” especially in the high definition mobile video market since the greater bandwidth demands associated with these transmissions will mean waiting for 4G networks to catch up with 3G in national distribution and for manufacturers to commit to using more expensive and higher quality components); Cisco, *Global Study: The Benefits and Barriers to Video Collaboration Adoption*, at 2 (Dec. 2010), at <http://www.ivci.com/pdf/white-paper-video-collaboration-study-cisco.pdf> (describing barriers to widespread adoption of video conferencing, including costs and lack of experience).

<sup>10/</sup> See *Technology Articles: 3GP - The Sensation in Mobile Technology & Entertainment*, ZIMBIO (Oct. 24, 2010), at <http://www.zimbio.com/Cell+Phone+Review+and+News/articles/CloZTOEiPgN/Technology+Articles+3GP+Sensation+Mobile+Technology> (explaining that 3gp, which belongs to 3GPP – the “Third Generation Partnership Project” – is the latest technology to enable video conferencing over mobile phones and that “all the major cell phone brands manufacture the 3G enabled phones to target a huge market that like this cutting edge technology.”).

<sup>11/</sup> See Katherine Trost, Nemertes Research, *Video Conferencing Standards and Interoperability Considerations*, SEARCH UNIFIED COMMUNICATIONS (Feb. 2011), at <http://searchunifiedcommunications.techtarget.com/feature/Video-conferencing-standards-and-interoperability-considerations> (“Video conferencing vendors including Radvision and Vidyo (and their partners) have already introduced H.264 SVC solutions, but until final video conferencing standards are established, interoperability among different H.264 SVC solutions isn’t possible.”).

accessible, and interoperable video conferencing market can naturally emerge,<sup>12/</sup> rather than force interoperability in any particular manner, also will ensure that consumers derive the greatest benefit from this new service.<sup>13</sup>

**B. Consistent With Commission Precedent, The Commission Should Take A User-Centric Approach In Adopting A Definition Of “Interoperable Video Conferencing Services.”**

Rather than implement a complicated, technical, or vague definition of “interoperable,” CTIA recommends that the Commission adopt a user-centric approach to define “interoperable video conference service.” Specifically, a service that offers a user the ability to make a real-time video conference call using a URI and a common platform (analogous to the PSTN for telephone calls), regardless of the network, device or provider used to initiate or receive the video communication, should be considered “interoperable” and so subject to accessibility requirements.

The user-centric approach has as its main benefit, simplicity. Unlike the Commission’s first proposed definition, it would not require the Commission, the wireless industry, or the consumer to make complicated determinations about whether a video conferencing service is compatible with all other products and platforms in the market, a definition that the Commission

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<sup>12/</sup> See S. Rep. No. 111–386, at 6 (2010) (recognizing that video conference services “may, by themselves, be accessibility solutions.”) (“Senate Report”).

<sup>13/</sup> Exercising regulatory restraint has resulted in the market for other successful services naturally becoming interoperable. Short Message Services (“SMS”), for example, was once an intra-network and proprietary service but has naturally progressed, due to the light regulatory approach coupled with industry leadership in standards and product development, to become the interoperable text communications service we know today. See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, ¶ 157 (2004) (“SMS interoperability in the U.S. mobile market was achieved as the result of a proactive competitive strategy on the part of the major U.S. mobile carriers. As noted in the *Eighth Report*, many carriers and analysts have credited the introduction of inter-carrier interoperability with stimulating the subsequent growth in text messaging.”).

fears might never be met.<sup>14/</sup> Nor would it require users to wait for the development or publication of industry guidelines (although as discussed below, such efforts are underway) or to engage in debates over what constitutes an industry standard or how it must be developed, as would the Commission’s second proposal. Rather, any provider that chooses to utilize the common platform for its video conference service, to enable its users to have this capability, would be considered “interoperable” and so would have to be accessible. A user would know that any service that chooses to connect to this platform would be interoperable and accessible.

Much as the Commission treated the emergence of Voice over Internet Protocol (“VoIP”) service – regulating those VoIP services that choose to be “interconnected” and largely leaving alone those services that do not<sup>15/</sup> – the Commission here should focus the regulation on those video conferencing services that choose to commonly connect via the platform.<sup>16/</sup> As the video conferencing market develops and consistent with the development of other communications services, providers of video conferencing services will naturally seek to make them interoperable over a common platform with other products and services in the market to offer their subscribers the greatest value and flexibility. The natural development of interoperability will allow accessibility to be addressed from the outset of those services.<sup>17/</sup>

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<sup>14/</sup> *Further Notice* ¶ 301.

<sup>15/</sup> *See, e.g., E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 24 (2005) (“*VoIP 911 Order*”); *see also id.* at ¶ 25 (“consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a ‘regular telephone’ service.”). Similarly, the Commission traditionally subjects services that choose to be common carrier “telecommunications service” to much heavier regulation than those that offer themselves as an “information service.”

<sup>16/</sup> The Commission’s third proposed definition would not allow for this distinction, and as such, is too broad. Defining “interoperable” as the general ability to connect to other services would capture nearly all devices, applications and services, a goal that is not prudent or consistent with Commission precedent, especially at this early stage of video conferencing services.

<sup>17/</sup> In defining “interoperable,” the Commission should not group together the interoperability issues in the general consumer video conferencing market with the dedicated Video Relay Service (“VRS”)

**C. The Natural Progression Towards The “Interoperability” Of Video Conferencing Services Is Underway.**

CTIA’s proposed user-centric approach would offer stakeholders clarity concerning the scope of the FCC’s rules and provide the certainty needed to develop interoperable video conferencing services. Creating a stable and predictable regulatory environment will, in turn, inspire greater investment and innovation in the interoperable video conferencing service market.<sup>18/</sup> It may also bring accessible video conferencing to the market much more quickly: the wireless industry, led by CTIA, has already started developing interoperability guidelines that it hopes will lead to the development of the common platform it envisions for video communications.

CTIA, with input from numerous industry stakeholders, has been drafting best practices for wireless service provider networks to allow wireless consumers to make video calls to each other regardless of their provider or its network. The “Video Cross-Carrier Interoperability” (“VCCI”) Requirements and Best Practice Recommendations provide guidance to stakeholders regarding expected functions to support cross-carrier video calls through a common platform, via

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market. Technological and interoperability issues in the VRS market are appropriately being considered separately. *See, e.g., Structure and Practices of Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Dockets Nos. 10-51 & 03-123; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123. This proceeding should focus on the services that will develop in the general consumer market, and how best to define and achieve interoperability among video conferencing services in that market.

<sup>18/</sup> *See, e.g., Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710, ¶ 198 (2010) (stating that the “new [mobile or point-to-multipoint services] requirements also will afford WCS licensees bright-line certainty regarding their performance obligations”); *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets; Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63R*, First Report and Order, 23 FCC Rcd 3406, ¶ 24 (2008) (noting the “need for certainty, and the desirability of providing appropriate and timely notification to manufacturers and service providers as regards their... obligations.”).

utilization of a URI (*i.e.*, phone number).<sup>19/</sup> While the VCCI Requirements are still being developed and are yet to be tested, CTIA believes they may provide one means of meeting its proposed definition of interoperability.

Recognizing that this may be the type of covered service that Congress intended, CTIA and its member companies are committed to addressing accessibility as part of this on-going process. Consistent with Congress and the FCC's policy goals, CTIA intends to consider accessibility at the outset, even before this service is deployed. At the appropriate time, CTIA will also solicit input from relevant consumer representatives to inform the performance objectives associated with the VCCI Recommendations. CTIA's goal is that accessibility be addressed simultaneously with interoperability for emerging wireless video conferencing services.<sup>20/</sup>

## **II. THE COMMISSION MAY NOT USE ANCILLARY JURISDICTION TO EXTEND ACCESSIBILITY REQUIREMENTS TO NON-REAL-TIME FEATURES OFFERED WITH INTEROPERABLE VIDEO CONFERENCING SERVICES**

The Commission recognized in the *Report and Order* that because the CVAA defines an interoperable video conferencing service as one that provides “*real-time*” video communications, “non-real-time or near-real-time features or functions of a video conferencing service, such as video mail, do not meet the definition of ‘real-time’ video communications,” and the Commission has no direct jurisdiction over them.<sup>21/</sup> The Commission now asks whether it can and should exercise ancillary jurisdiction to require nonetheless that such non-real-time features

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<sup>19/</sup> See Video Cross-Carrier Interoperability, *Requirements and Best Practice Recommendations for Network-to-Network Interface and Client Implementations*, [http://www.ctia.org/business\\_resources/index.cfm/AID/12079](http://www.ctia.org/business_resources/index.cfm/AID/12079) (describing CTIA's efforts and the proposed VCCI practices).

<sup>20/</sup> Of course, the FCC should not limit “interoperable” to those who voluntarily participate in VCCI. Any video conferencing services that offer similar capabilities should be considered “interoperable.”

<sup>21/</sup> *Report and Order* ¶ 51.

be made accessible.<sup>22/</sup> The Commission unequivocally lacks ancillary authority to do so.

Covered entities may choose to make non-real-time add-ons to video conferencing services accessible voluntarily, accessibility in such functions and features may occur naturally when an interoperable video conferencing service is accessible,<sup>23/</sup> and such functions and features may be accessibility solutions in their own right. However, the FCC cannot use ancillary authority to subject them to Section 716.

Ancillary jurisdiction may be appropriately employed only where the assertion of jurisdiction is reasonably ancillary to the effective performance of the Commission’s responsibilities.<sup>24/</sup> There are clear limits, however, on the exercise of such authority. Specifically, ancillary authority may not be used to evade statutory limitations on the Commission’s direct authority.<sup>25/</sup> While the Consumer Groups argue that they “cannot see a

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<sup>22/</sup> *Further Notice* ¶ 307.

<sup>23/</sup> *Id.* n.785.

<sup>24/</sup> *See VoIP 911 Order* ¶ 27.

<sup>25/</sup> *See, e.g., American Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) (stating that an agency “cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of [the agency] in a particular area.”); *Louisiana Pub. Serv. Com’n v. FCC*, 476 U.S. 355, 385 (1986) (“To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. We are both unwilling and unable to do so.”); *Motion Picture Ass’n of America, Inc. v. F.C.C.*, 309 F.3d 796, 807 (D.C. Cir. 2002) (“The FCC’s suggestion that § 4(i), without more, gives the agency authority to promulgate the disputed rules cannot withstand scrutiny. . . Chairman Powell’s discussion of this provision says it all: It is important to emphasize that section 4(i) is not a stand-alone basis of authority and cannot be read in isolation. It is more akin to a necessary and proper clause. Section 4(i)’s authority must be “reasonably ancillary” to other express provisions. And, by its express terms, our exercise of that authority cannot be inconsistent with other provisions of the Act. The reason for these limitations is plain: Were an agency afforded *carte blanche* under such a broad provision, irrespective of subsequent congressional acts that did not squarely prohibit action, it would be able to expand greatly its regulatory reach.”) (internal quotes omitted); *North American Telecommunications Ass’n v. FCC*, 772 F.2d 1282, 1292 (7th Cir. 1985) (“Section 4(i) is not infinitely elastic. It could not properly be used to regulate an activity unrelated to the communications industry, as the court found the Commission had done in *GTE Service Corp. v. FCC*, 474 F.2d 724, 735-36 (2d Cir.1972) (data processing), or, as its language makes clear, to contravene another provision of the Act, *see AT&T v. FCC*, 487 F.2d 865, 876-78 (2d Cir.1973). So if the Communications Act said, “hands off holding companies,” section 4(i) would not save the present order.”).

qualitative difference in the rationale” for why voicemail is subject to Section 255 but video mail might not be subject to Section 716,<sup>26/</sup> the clear distinction is that in Section 716, Congress clearly and deliberately<sup>27/</sup> chose to limit the covered features and functions of interoperable video conferencing to those that are “real time.”<sup>28/</sup> The Commission is not free to disregard such limitations,<sup>29/</sup> nor can it impose accessibility obligations on non-covered services under the guise of promoting the overall purpose of the CVAA to increase accessibility. As commenters have noted:

Such an unbounded theory could be used to justify virtually any regulation as long as the regulation allegedly advances accessibility. This unrestricted authority is inconsistent with the CVAA’s twin goals of balancing the need to ensure accessibility for individuals with disabilities with the need to promote innovation for the benefit of all consumers.<sup>30/</sup>

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<sup>26/</sup> Comments of 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, and Deaf and Hard of Hearing Consumer Advocacy Network, CG Docket No. 10-213, at 8-9 (filed April 25, 2011) (“Consumer Groups Comments”).

<sup>27/</sup> There can be no argument that the omission was not deliberate. *See, e.g., Silvers v. Sony Pictures Ent., Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (noting the presumption that “when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions”); *Arc Ecology v. U.S. Dep’t of the Air Force*, 411 F.3d 1092, 1100 (9th Cir. 2005) (“[O]missions are the equivalent of exclusions when a statute affirmatively designates certain persons, things, or manners of operation.”). *See also* Comments of CTIA-The Wireless Association®, CG Docket No. 10-213, at 21 (filed Apr. 25, 2011) (“CTIA April 2011 Comments”).

<sup>28/</sup> *See* Reply Comments of Consumer Electronics Association, CG Docket No. 10-213, at 9 (filed May 23, 2011) (“Calls for the Commission to exercise its ancillary authority in order to bring video mail within the ambit of the CVAA are inappropriate where Congress so clearly and specifically defined and limited the scope of services to be covered.”).

<sup>29/</sup> *Cf. Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 795 (8th Cir. 1997) (in denying the FCC jurisdiction over the pricing of local telephone service, the court stated, “[Section 154(i)] merely suppl[ies] the FCC with ancillary authority to issue regulations that may be necessary to fulfill its primary directives contained elsewhere in the statute. [It does not] confer [] additional substantive authority.”); *People of the State of California v. FCC*, 124 F.3d 934, 941 (8<sup>th</sup> Cir. 1997) (same). Here, the Commission seeks to go a step beyond what courts already have rejected, seeking not to exercise additional substantive authority where the CVAA is silent, but to avoid the effect of affirmative limitations in the statute on its authority.

<sup>30/</sup> *See* Ex Parte Notice of the Consumer Electronics Association, CG Docket No. 10-213, at 7 (filed July 18, 2011).

In contrast, ancillary jurisdiction can be appropriate where, for example, technology has evolved and the Commission must utilize ancillary authority to continue fulfilling its obligations under a law that has not kept pace.<sup>31/</sup> Such is not the case here: the CVAA is newly enacted.

Ancillary jurisdiction is also appropriate when the goal of the law cannot be accomplished without extending its coverage.<sup>32/</sup> This circumstance also cannot be said to apply. As interoperable video conferencing services have not even emerged in the market, it is not even clear what, if any, non-real time features and functions might be offered as add-ons to the service when it is offered. Without even knowing what the services are and how they relate to the video conferencing service, there can be no argument that the FCC needs to make them accessible in order to make the service accessible. It is quite possible, for example, that video mail will be an alternative to, not a necessary feature of, a video conference call. Regardless of whether the services are packaged together, many non-real-time add-ons may not affect the accessibility of a real-time interoperable video conference. As such, the Commission has no basis for asserting ancillary jurisdiction to require accessibility of non-real-time features and functions of interoperable video conferencing.

Even though the Commission lacks ancillary jurisdiction here, CTIA supports the Commission's efforts to encourage the development of innovations that benefit persons with disabilities by sponsoring workshops, forums, and application developer contests through the Accessibility & Innovation Initiative. Through FCC leadership, CTIA believes this approach can appropriately address issues with non-real time video communications by balancing the need for accessibility with the flexibility required for innovation.

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<sup>31/</sup> See *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

<sup>32/</sup> *Rural Tel. Coal. v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988) (upholding use of ancillary jurisdiction to create universal service fund to further the objective of making communication service available to all Americans at reasonable charges).

### III. THE COMMISSION MUST CONSTRUE THE REQUIREMENT TO NOT IMPAIR OR IMPEDE THE ACCESSIBILITY OF INFORMATION CONTENT AS CONGRESS INTENDED

The Commission must reject the IT and Telecom RERC’s suggestion to broaden the definition of what it means to “impair or impede the accessibility” of information content, because it would go far beyond Congress’s intent. The provision was meant solely to ensure that covered entities do not deliberately block or interfere with accessibility; it is not a means for the Commission to expand the scope of affirmative obligations on covered entities. The Commission properly determined in the *Report and Order* to implement a rule that disapproves of accessibility information being “stripped off” when information is transitioned from one medium to another,<sup>33/</sup> and there is no basis for expanding it.

While certain aspects of IT and Telecom RERC’s proposed definition – such as the proposal that covered entities not configure network equipment in a manner that would block or discard accessibility information – are properly covered by the existing rule (assuming accessibility has been incorporated in accordance with recognized industry guidelines so that it is recognizable),<sup>34/</sup> other aspects would impose significant requirements on covered entities that go beyond the CVAA’s requirements, such as the proposal to not install any equipment or features that cannot or do not support accessibility information.<sup>35/</sup> Such obligations would effectively require covered entities to investigate all possible means of accessibility and then attempt to tailor their equipment or services in advance to ensure harmony with all means of accessibility. Such an expansion of obligations is contrary to Congressional intent and impermissible.<sup>36/</sup>

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<sup>33/</sup> *Report and Order* ¶ 101.

<sup>34/</sup> H. Rep. No. 111–563, at 26 (2010) (“House Report”); see *CTIA April 2011 Comments* at 29.

<sup>35/</sup> *Further Notice* ¶ 308; see also *id.* at Appendix F.

<sup>36/</sup> See n.25 *supra* (Commission cannot exercise authority in a manner that contravenes another provision of the Act).

Moreover, implementing IT/Telecom RERC's proposed requirements as described would potentially violate other Commission rules and policies. IT/Telecom RERC's proposed obligations would require carriers to review the content being sent over their networks to determine if such content includes accessibility features, as well as discriminate among uses of the network to treat some content differently and allow some users to "substitute" accessible versions of content.

#### **IV. THE COMMISSION SHOULD IMPLEMENT SECTION 718 CONSISTENT WITH THE IMPLEMENTATION OF SECTION 716 BY PRESERVING INDUSTRY FLEXIBILITY**

##### **A. Section 718 Was Intended To Stand Alone.**

CTIA agrees with the Commission that in enacting Section 718, Congress carved out an exception to Section 716, and delayed its effective date to provide manufacturers and providers additional time to address the unique technological issues that arise with mobile Internet browsers. As noted by the FCC, developing accessibility solutions for mobile Internet browsers is a "unique" and "challenging" process because "three accessibility technologies, often developed by different parties, must be synchronized effectively together for a browser to be accessible to a blind user of a mobile phone."<sup>37/</sup> As such, it will take covered entities considerably more time to develop accessibility solutions for these browsers. Accordingly, CTIA supports the Commission's determination that a phased-in implementation date is appropriate and, as such, that any new requirements would take effect at the earliest on October 8, 2013.<sup>38/</sup>

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<sup>37/</sup> *Further Notice* ¶ 293.

<sup>38/</sup> *Id.* ¶ 292.

**B. The FCC Should Not Effectively Prescribe A Single Approach To Making Mobile Internet Browsers Accessible To The Blind Or Visually Impaired.**

The Commission asks whether it should require a particular technical approach to developing accessibility features for mobile Internet browsers; specifically, it inquires about the Code Factory’s recommendation that “manufacturers and operating system developers create an accessibility application program interface (“API”) to foster the incorporation of screen readers into mobile platforms across different phones.”<sup>39/</sup> Because it is far too early to select any particular technological solution, including any particular accessibility API, and doing so would make the process for developing accessible screen readers for mobile phones more complicated, the Commission should decline to do so at this time.

Currently there are numerous approaches to incorporating technologies that make mobile Internet browsers accessible to users who are blind or visually impaired, such as screen readers, text-to-speech and adjustable text or image sizes, colors and fonts. In some cases, these approaches may be proprietary (*i.e.* Apple iOS),<sup>40/</sup> while others may rely on an accessibility API (*i.e.*, Google Android).<sup>41/</sup> Each provider or manufacturer selects the option that is best for its particular offering, leaving plenty of room for innovation and change as technologies develop.

Providers and manufacturers should continue to be allowed this flexibility. While a

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<sup>39/</sup> *Id.* ¶ 297.

<sup>40/</sup> See Apple Developer, iOS Accessibility, at <https://developer.apple.com/technologies/ios/accessibility.html> (last visited February 6, 2011) (describing Apple iOS as coming standard with “a wide range of accessibility features” including “VoiceOver, the revolutionary screen reader for blind and low vision users, as well as dynamic screen magnification, playback of closed-captioned video, mono audio, reverse video and more.”).

<sup>41/</sup> See Google I/O Developer Conference, Sessions, *Leveraging Android Accessibility APIs To Create An Accessible Experience* (May 10, 2011), at <http://www.google.com/events/io/2011/sessions/leveraging-android-accessibility-apis-to-create-an-accessible-experience.html> (discussing the Android framework, which includes a set of APIs that enables the creation of third-party accessibility services such as TalkBack, a screenreader for the blind, and text-to-speech).

proprietary or API approach is common today – and may be appropriate for a safe harbor – it is important that the Commission not suggest that this is the preferred means, since that could effectively freeze technology in place. Such a result would be particularly detrimental to the accessibility community, because the market is developing rapidly and any specified technology or approach may soon become obsolete, leaving persons with disabilities with less desirable alternatives.

In particular, it is not clear that an accessibility API is the best means of ensuring accessible browsers in the future. HTML 5, the latest standard for Internet browsers, allows a browser to run applications with no need for plug-ins – in effect, allowing applications, including accessibility information, to be stored in and available from a remote computing network (*i.e.*, cloud computing). A device may not need to use a specific API to achieve accessibility; any device will only need the ability to support a browser that accepts HTML 5. The Commission, as it has before,<sup>42/</sup> should refrain from approving any specific technology solution or approach to ensure that it does not freeze or hinder the development of these and other innovative developments.

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<sup>42/</sup> See, *e.g.*, *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 13734, ¶ 40 (2011) (“[W]e propose to refrain from specifying any particular standard for the interchange format or delivery format of IP-delivered video programming at this time, in order to foster the maximum amount of technological innovation.”); *Year 2000 Biennial Regulatory Review*, et al., Report and Order, 17 FCC Rcd 18401, ¶ 37 (2002) (“...our general policy is to allow market forces to determine technical standards wherever possible, and, accordingly, we refrain from adopting rules mandating detailed hardware design requirements, unless doing so is necessary to achieve a specific public interest goal.”); *FCC Strategic Plan 2006-2011*, 2005 FCC Lexis 5325, \*6 (2005) (“[r]egulatory policies must promote technological neutrality, competition, investment, and innovation...”) & \*9 (“At the same time, the Commission shall ensure that its regulatory approach does not promote one technology over another.”); *Comcast Corporation; Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd 228, ¶ 15 (2007) (“...Congress intended ‘that the Commission avoid actions which could have the effect of freezing or chilling the development of new technologies and services.’”) (quoting S. Rep. 104-230, at 181 (1996)).

**C. The FCC Should Keep In Mind The Numerous Factors That Must Impact Its Implementation Of Section 718.**

Implementation of Section 718 raises many complicated technical as well as operational issues that the Commission should consider as it contemplates Section 718 implementation requirements. CTIA respectfully asks the Commission to consider the following specific issues.

**Processing Power Limitations.** The FCC must recognize, and the proposed rules must reflect, that not all wireless devices can support a full screen reading browser and a screen reader. While the Commission concluded in the *Report and Order* that concerns about processing power were unwarranted because, generally, accessibility solutions require less processing power than the service itself,<sup>43/</sup> the concern arises not from the processing power required to run each, but that required to run both simultaneously. In some cases, running both a screen reader and full screen reading browser may significantly impact a device that cannot support the simultaneous processing capabilities. The FCC has previously recognized that it must provide covered entities leeway with respect to its rules to account for the constraints of particular apparatus,<sup>44/</sup> and its rules should specifically do so here.

**Patents/Licensing Considerations.** The Commission must consider how patent or licensing issues will impact the ability of covered entities to meet its requirements. In many cases wireless service providers and device manufacturers have filed patents for particular technologies or devices which took considerable resources and time to develop. In other cases, patents for emerging services have been purchased or a provider or manufacturer has entered into

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<sup>43/</sup> *Report and Order* ¶ 187.

<sup>44/</sup> *See, e.g., Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12-9, ¶¶ 36-37 and n.166 (rel. Jan. 13, 2012) (recognizing and citing to comments about the concerns that accessibility requirements could be impaired by factors outside the control of covered entities “such as broadband connection speeds or the constraints of a particular apparatus.”).

detailed licensing agreements with software providers.<sup>45/</sup> These patents and licenses limit the scope of what providers and manufacturers are able to offer. For these reasons and consistent with a recent *Executive Order*, the Commission should ensure that its rules do not require any particular technological method for compliance that may run afoul of these limitations.<sup>46/</sup>

**Third Party Limited Liability Provisions.** The Commission should keep in mind the limits on its rules that flow from the CVAA's limitation on third party liability. Where an entity is acting only as a "passive conduit of communications," it cannot be liable for the failure of services and information reached over its network to comply with the CVAA.<sup>47/</sup> As noted by CTIA in its initial comments, rules delineating "[c]lear limitations on liability will ensure that all participants understand their role in making a product or service accessible and are comfortable that they will not be held responsible for failures that they have no role in preventing."<sup>48/</sup> In implementing Section 718, the Commission should ensure its rules do not contravene this limitation.

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<sup>45/</sup> See, e.g., *Google Gobbles Up More IBM Patents*, e.week.mobile.com (Jan. 3, 2012) <http://mobile.eweek.com/c/a/Mobile-and-Wireless/Google-Gobbles-Up-More-IBM-Patents-Report-573136/> (reporting that Google had acquired a number of IBM patents for a variety of things including mobile devices and browser widgets).

<sup>46/</sup> "All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." See, [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119). As explained in the order, "[t]hese standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties." In shorthand, such standards are "open" and subject to FRAND licensing. Proprietary solutions are incompatible with this OMB requirement.

<sup>47/</sup> House Report at 22 (the Act provides "liability protection where an entity is acting as a passive conduit of communications made available through the provision of advanced communications services by a third party or where an entity is providing an information location tool through which an end user obtains access to services and information"; see also Act § 2(a).

<sup>48/</sup> *CTIA April 2011 Comments* at 11.

**V. THE FCC SHOULD ENSURE THAT ANY APPROACH IT TAKES TO ADDRESS ISSUES IN THE INSTANT PROCEEDING IS CONSISTENT WITH ITS ACTIONS IN OTHER COMMISSION DOCKETS**

**A. The FCC Should Adopt A Permanent, Self-Executing Small Entity Exemption.**

The Commission should make permanent an exemption for small entities from the obligations of Section 716. Section 716(h), which expressly provides that the Commission may exempt small entities from that section's requirements, is a logical outgrowth of Congress's acknowledgment that the application of new accessibility obligations on American small businesses "may slow the pace of technological innovation...[for entities that] may not have the legal, financial, or technical capability" to do so.<sup>49/</sup> In the *Report and Order*, the Commission temporarily exempted from the obligations of Section 716 all manufacturers of ACS equipment and all providers of ACS that qualify as small business concerns under the Small Business Administration's ("SBA") rules and size standards, "to avoid the possibility of unreasonably burdening 'small and entrepreneurial innovators and the significant value that they add to the economy.'"<sup>50/</sup> These same rationales support the adoption of a permanent exemption.

Small entities are best defined by reference to the SBA definitions. The Commission frequently has used these standards to define small entities,<sup>51/</sup> Congress appeared to contemplate

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<sup>49/</sup> See 47 U.S.C. § 617(h); House Report at 26 (2010); *Report and Order* ¶ 201.

<sup>50/</sup> *Report and Order* ¶ 204. See also *id.* ¶ 205 ("Despite the lack of a meaningful substantive record upon which to adopt a permanent exemption, without a temporary exemption we run the risk of imposing an unreasonable burden upon small entities and negatively impacting the value they add to the economy.").

<sup>51/</sup> See, e.g., *Promoting Diversification of Ownership in the Broadcasting Services*, et al., Report and Order and Third FNPRM, 23 FCC Rcd 5922, ¶ 7 (2007); *Schools and Libraries Universal Service Support Mechanisms*, First Report and Order, 17 FCC Rcd 11521, ¶ 29 (2002).

their use,<sup>52/</sup> and their clear and familiar benchmarks have proved a reliable and simple means for affected entities to evaluate their eligibility.<sup>53/</sup>

Rather than being arbitrarily temporary, the exemption should last as long as an entity continues to meet the SBA definition of a small business. The burdens on small businesses and the threat that overly burdensome regulation poses to their continued existence do not expire with time. Many small businesses simply do not have the profit margins to allow them to plan to assume additional regulatory obligations in the future, making a permanent exemption the only means of ensuring their survival. The Commission should create a permanent exemption to provide regulatory certainty for the many small businesses and entrepreneurs that add value to our economy.

In addition, the permanent small entity exemption should be self-executing.<sup>54/</sup> Such an approach would serve the dual purpose of conserving the FCC's limited resources by avoiding numerous, potentially lengthy, proceedings before the Commission to determine eligibility, and it would also prevent unnecessary *ab initio* administrative red tape for small businesses who are accustomed to their existing status as SBA-defined small entities in other legal contexts. Just as the Commission established a self-executing exemption for customized equipment in the *Report*

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<sup>52/</sup> *Report and Order* ¶ 201; *see also* House Report at 26 (“...the Committee expects that the Commission will consult with the Small Business Administration when developing an appropriate definition of ‘small entity’.”).

<sup>53/</sup> For the SBA's Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *see* [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf) (effective Nov. 5, 2010).

<sup>54/</sup> The Commission took this approach for purposes of the temporary exemption. *Report and Order* ¶¶ 208-09.

*and Order*,<sup>55/</sup> and in the same manner that the Commission has instituted self-executing exemptions in its closed captioning rules,<sup>56/</sup> it should do so here for the accessibility exemption.

Finally, the small business exemption should apply to any subsequent versions, updates, or other iterations of a previously exempt equipment or service. In the limited cases in which an entity that previously qualified as a small entity no longer does so, to end the exemption would effectively retroactively penalize a company that is merely updating a covered product or service that was created while the company was under the protection of the exemption.<sup>57/</sup> To require a company that may have just recently outgrown the SBA definitions to then immediately apply new standards to its existing products — perhaps requiring resource-intensive redesign — would be highly burdensome. The more prudent and effective approach is to foster efforts to develop more innovative versions of services that customers already use.

**B. The Commission Should Not Expand The Definition Of Peripheral Devices To Include Software And Electronically Mediated Services.**

It would not be appropriate for the Commission to expand the definition of peripheral devices to include software or electronically mediated services.

*First*, under any reasonable definition of the terms, “software” is separate and distinct from “device.” The Commission has recognized the terms as separate since the commencement of this proceeding,<sup>58/</sup> and rightly concluded that “[t]he word ‘device’ refers to a physical object

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<sup>55/</sup> See *Report and Order* ¶ 178.

<sup>56/</sup> See generally 47 C.F.R. § 79.1(d).

<sup>57/</sup> See, e.g., *Comments of CTIA – The Wireless Association, Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, at 6-7 (filed Jan. 13, 2012) (noting that the FCC has taken a forward-looking approach to modified regulatory requirements).

<sup>58/</sup> Peripheral devices and software were also defined distinctly in the *Accessibility NPRM*, with software having a decidedly computer-centric focus and peripheral devices being concentrated on equipment. 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*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, ¶ 79 (2011) (“*Accessibility NPRM*”). The *Accessibility NPRM* defined

and cannot reasonably be construed to also refer to separately-acquired software.”<sup>59/</sup> The Commission should not reverse its logical reasoning by unnaturally expanding the definition of peripheral devices.

*Second*, the Commission should not expand the definition of peripheral devices to include “electronically mediated services” until affected entities have had an opportunity to comment meaningfully on the proposal. IT and Telecom RERC suggested the inclusion, but did not offer any definition or explanation of what is meant by such services, and it is not a commonly understood industry term. While the Commission rightfully seeks comment on the definition,<sup>60/</sup> the IT and Telecom RERC’s proposal needs to be clarified before CTIA may provide informed views on the topic.

### **C. The FCC Should Not Adopt A New Set Of Performance Objectives.**

There is no need to develop a separate set of performance objectives specifically for purposes of Section 716. Rather, the Commission should largely rely on the performance objectives contained in the U.S. Access Board’s guidelines for compliance with Section 255, adjusted as necessary to reflect the differences between the two provisions and their goals.

While CTIA has previously noted concerns with importing the Access Board’s guidelines directly into the rules adopted for Section 716,<sup>61/</sup> adjusting those guidelines would be far preferable to the effort and uncertainty that would arise if the Commission pursues adopting the

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software as “computer programs, procedures, rules, and related data and documentation that direct the use and operation of a computer or a related device and instruct it to perform a given task or function,” whereas peripheral device was defined as “devices employed in connection with equipment covered by this [proceeding] to translate, enhance, or otherwise transfer advanced communications services into a form accessible to individuals with disabilities.”

<sup>59/</sup> *Report and Order* ¶ 62 (noting Section 716(j)’s rule of construction that the section should not be construed to require a manufacturer of equipment used for ACS or a provider of ACS “to make every feature and function of every *device or service* accessible for every disability.”) (emphasis in original).

<sup>60/</sup> *Further Notice* ¶ 309.

<sup>61/</sup> *See, e.g., CTIA November 2010 Comments* at 11-12; *CTIA April 2011 Comments* at 30-31.

performance objectives proposed by the IT and Telecom RERC. Developing entirely new performance objectives would be a lengthy and burdensome process, requiring extensive testing. Moreover, because some devices will be subject to both Section 255 and Section 716's standards, adopting new performance objectives would add an additional layer of testing for – and impose potentially different standards on – such devices. Moreover, the Telecom and IT RERC's proposal is unsuitable; it proposes requirements for every device or service that limit the flexibility that Congress provided to industry, and may be inconsistent with existing FCC accessibility rules (*i.e.*, the hearing aid compatibility rules).

**D. There Is No Need For A Separate Recordkeeping And Enforcement Regime To Govern Section 718.**

Given the clear and comprehensive nature of the recordkeeping and enforcement requirements the Commission adopted in the Report and Order for Section 716, CTIA believes that the same obligations should apply to Section 718. The Commission adopted those rules after thoughtfully considering industry input, and crafted a process that encourages informal dispute resolution without imposing unreasonable burdens on consumers wishing to file complaints.<sup>62/</sup> The same considerations should govern alleged violations of Section 718, and the rules are sufficiently flexible to encompass such violations. Regulatory uniformity with respect to the recordkeeping obligations and enforcement procedures for these two sections would also be clearer and simpler for both covered entities and consumers.

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<sup>62/</sup> *Report and Order* ¶ 233.

## CONCLUSION

The Commission should revise its proposed rules as discussed herein.

Respectfully submitted,

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