

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

**REPLY COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

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SUMMARY

As demonstrated by the record, CEA and its members remain committed to the increased accessibility of advanced communications services (“ACS”) and ACS equipment. As the Commission resolves the issues raised in the *ACS Further Notice*, it should take the same balanced approach as it did in the *ACS Order*. Some commenters, however, would have the Commission promote accessibility at the expense of industry flexibility. Such proposals are inconsistent with Congress’s directive to balance the increased accessibility of ACS with service providers’ and manufacturers’ continued ability to innovate for all consumers. The Commission should reject any such proposals and hew closely to the statutory language of Sections 716, 717, and 718 of the Communications Act as informed by the legislative history.

These reply comments primarily focus on addressing specific proposals in the record that (i) seek to sacrifice innovation in the name of accessibility, and/or (ii) have no basis in the CVAA or legislative history.

Permanent Small Entity Exemption. The adoption of a permanent small entity exemption will facilitate the entry and continued participation of small entrepreneurial businesses in providing innovative ACS and ACS equipment. The suggestions that such an exemption is unnecessary fail to comprehend the compliance burden that the ACS rules would impose on small businesses.

Section 718 Implementation. Commenters largely agree that Section 718 of the Communications Act should be implemented consistent with the rules implementing Sections 716 and 717. A consistent approach for accessibility and usability, recordkeeping, and enforcement will help minimize the compliance burden on covered entities. There is no compelling support in the record for the Commission’s proposed extrapolation of Section 718 into a broad accessibility requirement for all browsers. The Commission should provide industry with a phase-in of the Section 718 rules that is consistent with the phase-ins of the *ACS Order*. In addition, the Commission should refrain from mandating a specific approach for mobile browser accessibility to ensure industry has flexibility to continue to innovate.

Interoperable Video Conferencing Service. The Commission should define “interoperable” consistent with its ordinary and widely-held meaning. Specifically, “interoperable” should be defined as the ability to operate among different platforms, networks, and providers without special effort or modification by the end user. In addition, the Commission should reject the suggestion that it dictate “protocols” or other technical aspects of video conferencing services.

Video Mail. Contrary to the suggestion of some commenters, the use of ancillary jurisdiction to impose ACS accessibility requirements on video mail and other non-real time services is inappropriate. The suggestion is inconsistent with the statutory text that so clearly and specifically defined and limited the scope of covered services.

IT and Telecom RERCs’ Proposals. The Commission should reject the IT and Telecom RERCs’ proposals. The RERCs’ proposed changes to the performance objectives are unnecessary and would only impede industry flexibility. Similarly, the RERCs’ proposed

interpretation of the accessibility of information content requirement would inhibit innovation and only cause uncertainty as to the obligations of service providers and manufacturers alike.

Electronically Mediated Services. Commenters largely agree that the Commission should reject the proposal to include “electronically mediated services” within the definition of “peripheral devices.” Amending the definition to include “electronically mediated services” is inappropriate and will only cause uncertainty and confusion regarding the obligations of covered entities.

In considering the various suggestions made in the record, the Commission should not veer from Congress’s intent that the CVAA be implemented in a manner that balances increased accessibility with promoting innovation for the benefit of all consumers.

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**REPLY COMMENTS OF
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The Consumer Electronics Association (“CEA”) hereby submits these reply comments in response to the Further Notice of Proposed Rulemaking (“*ACS Further Notice*”) issued in the above-captioned proceedings.¹

I. INTRODUCTION

As demonstrated by CEA’s initial comments as well as those from other industry representatives, CEA and its members are committed to the increased accessibility of advanced communications services (“ACS”) and ACS equipment. The record also reinforces that the Commission should maintain the balanced approach adopted in the initial Report and Order

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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14677-14692 ¶¶ 279-317 (2011) (“*ACS Further Notice*”).

(“*ACS Order*”)² as it resolves the issues raised in the *ACS Further Notice*. Some commenters, however, seek to limit industry flexibility in developing accessibility solutions. Such proposals are antithetical to Congress’s directive in the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) to balance the increased accessibility of ACS with manufacturers’ and service providers’ continued ability to innovate for all consumers. The Commission should reject any such proposal and hew closely to the statutory language of Sections 716, 717, and 718 of the Communications Act of 1934, as amended (the “Communications Act”)³ as informed by the CVAA’s legislative history.⁴

II. A PERMANENT SMALL ENTITY EXEMPTION WILL FACILITATE THE ENTRY AND CONTINUED PARTICIPATION OF SMALL ENTREPRENEURIAL BUSINESSES IN PROVIDING ACS AND ACS EQUIPMENT

The Commission should adopt a permanent small entity exemption from the ACS rules based on the rules and size standards of the Small Business Administration (“SBA”).⁵ Without a permanent small entity exemption, small entrepreneurial businesses may be forced to exit and/or forgo entering the market in light of the additional costs associated with compliance.⁶

² 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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14559-14677 ¶¶ 1-278 (2011) (“*ACS Order*”).

³ 47 U.S.C. §§ 617, 618, 619.

⁴ See generally H.R. Rep. No. 111-563 (2010) (“*House Committee Report*”); S. Rep. No. 111-386 (2010).

⁵ See CEA at 3-4. In these reply comments, all comments filed on or about February 13, 2012, in this proceeding are short-cited by name of party.

⁶ See, e.g., CTIA at 21.

Opponents fail to appreciate the compliance burden that the ACS rules impose on small businesses.

For instance, one commenter mistakenly suggests that the achievability analysis and the “not achievable” defense to a formal or informal complaint are equivalent to an exemption.⁷ This suggestion demonstrates a failure to fully comprehend the extent of a covered entity’s compliance burden. Fundamentally, any such suggestion is inconsistent with Congress’s recognition that the application of new accessibility obligations on small businesses “may slow the pace of technological innovation” because such entities “may not have the legal, financial, or technical capability to incorporate accessibility features.”⁸ Practically, a permanent small entity exemption would free a small business from the recordkeeping and certification requirements, from having to conduct a full achievability analysis for each of its covered products, and most importantly, from the potential expense of defending against enforcement actions, including formal and informal complaint proceedings.

The same commenter also mistakenly suggests that the Americans with Disabilities Act (“ADA”) somehow limits the Commission’s authority to implement a permanent small entity exemption.⁹ Nothing in the CVAA indicates that somehow the ADA, rather than the CVAA, governs the Commission’s small entity exemption authority. Of course, there are provisions of the CVAA, such as the definition of “disability,”¹⁰ where Congress expressly incorporated by

⁷ See *Telecommunications for the Deaf and Hard of Hearing, Inc., et al.* (“Consumer Groups”) at 4.

⁸ *House Committee Report* at 26.

⁹ See *Consumer Groups* at 5-6.

¹⁰ See 47 U.S.C. § 153(18) (“The term ‘disability’ has the meaning given such term under section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12102).”).

reference a portion of the ADA. However, in multiple provisions of the CVAA, including the section addressing the Commission’s small business exemption authority, Congress did not incorporate or make reference to the ADA in any way.¹¹ Specifically, the CVAA provides the Commission with the express authority to grant a small entity exemption and that authority is in no way limited by Title III or any other portion of the ADA.¹²

In addition, there is no basis to suggest that large companies would have the ability to take advantage of the small entity exemption by outsourcing certain design and/or development tasks to a small company.¹³ For a given covered device or service, the entity that meets the Commission’s definition of “manufacturer”¹⁴ or “service provider”¹⁵ is the entity responsible for compliance with ACS rules.¹⁶ The permanent small entity exemption only should apply when

¹¹ As support for their position, the Consumer Groups cite portions of the *ACS Order* that discuss instances in which Congress expressly incorporated by reference the ADA, such as the definition of “disability” under the CVAA and the definition of “readily achievable” under Section 255 of the Act, which is not at issue in this proceeding. *See* Consumer Groups at 5 n.11 (citing the *ACS Order* ¶¶ 117-18, 119). But Consumer Groups fail to provide any support for the claim that the ADA somehow limits the Commission’s authority to implement a permanent small entity exemption.

¹² *See* 47 U.S.C. § 617(h)(2) (“Small entity exemption. The Commission may exempt small entities from the requirements of this section.”).

¹³ *See* IT and Telecom RERCs at 2-3.

¹⁴ *See* 47 C.F.R. § 14.10(n) (“The term manufacturer shall mean an entity that makes or produces a product, including equipment used for advanced communications services, including end user equipment, network equipment, and software.”).

¹⁵ *See* 47 C.F.R. § 14.10(s) (“The term service provider shall mean a provider of advanced communications services that are offered in or affecting interstate commerce, including a provider of applications and services that can be used for advanced communications services and that can be accessed (*i.e.*, downloaded or run) by users over any service provider network.”).

¹⁶ *See* 47 C.F.R. § 14.20(a)(1)-(2).

the “manufacturer” or “service provider” meets the qualification rules and size standards adopted by the Commission.

III. COMMENTERS LARGELY AGREE THAT SECTION 718 SHOULD BE IMPLEMENTED CONSISTENT WITH THE RULES IMPLEMENTING SECTIONS 716 AND 717

A. A Consistent Approach for Accessibility and Usability, Recordkeeping, and Enforcement Will Help Minimize the Compliance Burden on Covered Entities.

The record supports the Commission applying the *ACS Order*'s approach to accessibility and usability, recordkeeping, and enforcement to the implementation of Section 718.¹⁷ The Commission should interpret and apply the Section 718 “achievable” and industry flexibility standards consistent with its interpretation and application of those same standards as set forth in Section 716.¹⁸ Similarly, the Commission should apply the same recordkeeping and enforcement rules adopted in the *ACS Order* to the Section 718 requirements. A uniform approach to the achievability standard, recordkeeping, and enforcement will help minimize the burden on industry and the Commission alike.

B. There is No Compelling Support for the Proposed Extrapolation of Section 718 into a Broad Accessibility Requirement for All Browsers.

The record provides no meaningful support for the Commission's proposal to extrapolate Section 718's focused requirement on some mobile browsers into a broad accessibility requirement that reaches *all* browsers for individuals with *all* types of disabilities.¹⁹ As

¹⁷ See, e.g., CTIA at 25.

¹⁸ Compare 47 U.S.C. § 617(a)-(b) with 47 U.S.C. § 619.

¹⁹ See, e.g., ITI at 1 (“[T]he Section 718 requirement that Internet browsers on mobile phones must be accessible to a specifically enumerated set of disabilities is a stand-alone requirement.”).

explained in CEA’s initial comments,²⁰ there is no support in the CVAA for the claim that Section 718 of the Communications Act is an “exception” to a general accessibility requirement imposed on all Internet browsers.²¹ No such general requirement exists. The CVAA does not support the reasoning of the *ACS Further Notice* that Section 718, which focuses on a subset of mobile browsers for individuals who are blind or have a visual impairment, implies the existence of a broad accessibility requirement that reaches all browsers for individuals with all types of disabilities.²² The plain language of Section 718 simply does not address browsers or disabilities other than those described in its express terms,²³ and certainly provides no basis for the broad proposals in the *ACS Further Notice*.

C. The Commission Should Provide Industry With A Phase-in of the Section 718 Rules Similar to That Provided for the Section 716 Rules.

Similar to the implementation of Section 716, the Commission should provide industry with at least a two-year phase-in to comply with the Commission’s final rules implementing Section 718.²⁴ Any suggestion that industry does not need a phase-in fails to recognize that industry cannot begin designing products that will comply with the final Section 718 rules until they are released. As explained in CEA’s initial comments,²⁵ the Section 718 recordkeeping requirements should only become effective one year after the Section 718 rules generally

²⁰ See CEA at 4-6.

²¹ See *ACS Further Notice*, 26 FCC Rcd at 14683 ¶ 296.

²² See *id.*

²³ See 47 U.S.C. § 619(a).

²⁴ See CTIA at 16.

²⁵ See CEA at 9-11.

become effective, and full compliance with the Section 718 rules should not be required until two years after the release of the order establishing the final Section 718 rules.

D. The Commission Should Refrain From Mandating a Specific Approach For Mobile Browser Accessibility.

Consistent with the CVAA, the Commission should provide covered entities with flexibility in implementing accessibility in mobile browsers.²⁶ Although CEA supports the development of accessibility standards, including application programming interfaces (“APIs”), the Commission should not mandate the use of such standards.²⁷ Today, manufacturers and service providers use a variety of techniques to provide mobile browser accessibility, some of which may use built-in proprietary techniques (*i.e.*, Apple iOS) and others may use an accessibility API (*i.e.*, Google Android).²⁸ With the rapid pace of change in mobile technologies, the Commission should continue to allow industry the flexibility to adopt alternative accessibility approaches because any mandated approach would quickly become obsolete and “slow innovation,”²⁹ and thus inhibit covered entities from adopting alternative accessibility approaches that may better serve the needs of the blind or visually impaired.

IV. THE COMMISSION SHOULD DEFINE “INTEROPERABLE” CONSISTENT WITH ITS ORDINARY AND WIDELY-HELD MEANING

There is broad support in the record for defining “interoperable,” used in the term “interoperable video conferencing service,” as the ability to operate among different platforms,

²⁶ See 47 U.S.C. § 619(b) (enabling a manufacture or provider to meet the requirements of Section 718 of the Communications Act through either built-in or third party solutions).

²⁷ See CTIA at 18 & n.42; ITI at 2; Microsoft at 3-4; TIA at 5.

²⁸ See, *e.g.*, IT and Telecom RERCs at 10; CTIA at 17 & nn.40-41; Google at 7.

²⁹ Google at 8 (“[A] mandatory API for all platforms will slow innovation.”).

networks, and providers without special effort or modification by the end user.³⁰ Defining “interoperable” in this manner is consistent with the ordinary and widely-held meaning of the term.³¹ For example, the proposed definition of “interoperable” is consistent with the definitions provided by the Institute of Electrical and Electronics Engineers (“IEEE”),³² Newton’s Telecom Dictionary,³³ and the Merriam-Webster Dictionary.³⁴

In addition, the Commission should reject the suggestion that it dictate “protocols” or other technical aspects of video conferencing services.³⁵ This suggestion ignores the plain language of the CVAA and the *ACS Order*. Section 716(e)(1)(D) expressly prohibits the Commission from mandating technical standards, including those necessary to implement

³⁰ See, e.g., ITI at 6-7; Microsoft at 6-7; NCTA at 5-6; TIA at 9; VON Coalition at 4-5.

³¹ See *Bennett v. Islamic Republic of Iran*, 618 F.3d 19, 22 (D.C. Cir. 2010) (“Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” (internal quotations and citation omitted)); see also *American Mining Congress v. EPA*, 824 F.2d 1177, 1183 (D.C. Cir. 1987) (“The first step in statutory interpretation is, of course, an analysis of the language itself. As the Supreme Court has often observed, the starting point in every case involving statutory construction is the language employed by Congress. In pursuit of Congress’ intent, we start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used.” (internal quotations and citations omitted)).

³² Institute of Electrical and Electronics Engineers, Standards Glossary (last revised Mar. 7, 2012), http://www.ieee.org/education_careers/education/standards/standards_glossary.html#sect9 (defining “interoperability” as the “[a]bility of a system or a product to work with other systems or products without special effort on the part of the customer”).

³³ HARRY NEWTON, NEWTON’S TELECOM DICTIONARY 508 (24th ed. 2008) (defining “interoperate” as “[t]he ability of equipment from several vendors to work together using a common set of protocols”).

³⁴ *Interoperability Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriamwebster.com/dictionary/interoperability> (last visited Mar. 7, 2012) (defining “interoperability” as the “ability of a system . . . to work with or use the parts of equipment of another system”).

³⁵ See Consumer Groups at 7.

interoperability among video conferencing services.³⁶ Moreover, the Commission has already concluded that “[t]here simply is no language in the CVAA to support [the] view[] that interoperability is required or should be required, or that [the Commission] may require video conferencing services to be interoperable.”³⁷ Any suggestion that the Commission should dictate specific protocols for video conferencing services ignores this well-reasoned conclusion.

V. USE OF ANCILLARY JURISDICTION TO IMPOSE ACS ACCESSIBILITY REQUIREMENTS ON VIDEO MAIL AND OTHER NON-REAL TIME SERVICES IS INAPPROPRIATE

The plain language of the statute prevents the Commission from expanding the definition of “interoperable video conferencing service” to include non-real time services such as video mail. Contrary to the suggestion of some commenters,³⁸ the Commission should refrain from attempting to use its ancillary jurisdiction to cover such non-real time services.³⁹ Use of the Commission’s ancillary authority to bring video mail or other non-real time services within the ambit of the CVAA is inappropriate where Congress so clearly and specifically defined and limited the scope of services to be covered.⁴⁰

In addition, the Commission should reject proponents’ attempt to bootstrap an accessibility requirement for video mail based on the existing accessibility requirement for voicemail. Unlike voice communications where “[o]ften all that is available at the other end of the line is an automated

³⁶ See 47 U.S.C. § 617(e)(1)(D).

³⁷ *ACS Order*, 26 FCC Rcd at 14577 ¶ 48.

³⁸ See Consumer Groups at 10-11; IT and Telecom RERCs at 7-8.

³⁹ See CTIA at 12-14; ITI at 7; Microsoft at 9-10; NCTA at 6-7; VON Coalition at 6.

⁴⁰ See 47 U.S.C. § 153(27) (“The term ‘interoperable video conferencing service’ means a service that provides *real-time* video communications, including audio, to enable users to share information of the user's choosing.” (emphasis added)).

voicemail or menu system,”⁴¹ video communications are typically conducted in a media rich environment where additional communication formats are possible, e.g., voice-only communications and text-based communications. Because of these alternatives, the accessibility of video mail is not critical to the accessibility of the associated interoperable video conferencing service. Thus, the record fails to demonstrate that expanding the application of the ACS rules to non-real-time video communication services, such as video mail, is necessary for the accessibility and usability of “interoperable video conferencing service.”⁴²

VI. THE RECORD DOES NOT SUPPORT THE ADOPTION OF THE RERCs’ PROPOSALS

A. The Commission Should Reject the RERCs’ Proposed Changes to the Performance Objectives.

Commenters largely agree that the IT and Telecom RERCs’ proposed changes to the performance objectives are unnecessary and would only impede industry flexibility.⁴³ The performance objectives adopted in the *ACS Order*⁴⁴ provide the necessary detail, and are modeled on the performance objectives implemented under Section 255 of the Communications Act that have been in place for over a decade.⁴⁵ These performance objectives have worked well, affording service providers and manufacturers the flexibility they need to continue to

⁴¹ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6459 ¶ 102 (1999) (“*Section 255 Order*”).

⁴² *See id.* at 6459 ¶ 103 (“This record persuades us that failure to ensure accessibility of voicemail and interactive menu services, and the related equipment that performs these functions, would seriously undermine the accessibility and usability of telecommunications services required by sections 255 and 251(a)(2).”).

⁴³ *See* CTIA at 24-25; NCTA at 2-3.

⁴⁴ *See* 47 C.F.R. § 14.21.

⁴⁵ *Section 255 Order*, 16 FCC Rcd at 6490-91, App. B.

develop innovative new products while still complying with the requirements of Section 255. There is every reason to believe the same approach will continue to work to ensure compliance with the ACS requirements of the CVAA.⁴⁶ Adopting RERCs' allegedly "testable criteria" would only subvert this proven approach and reduce industry flexibility, inhibit innovation, and potentially undermine the accessibility of new technologies.

B. The Commission Should Also Reject the RERCs' Proposed Interpretation of the Accessibility of Information Content Requirement.

Similarly, the record does not support incorporating the RERCs' interpretation of the accessibility of information content requirement.⁴⁷ IT and Telecom RERCs' suggestion⁴⁸ that the Commission should seek to maintain a list of specific prohibited practices under Section 716(e)(1)(B)⁴⁹ fails to comprehend the rapidly evolving nature of the technologies involved. Incorporating RERCs' vague requirements would inhibit innovation and only cause uncertainty as to the obligations of service providers and manufacturers alike. Instead, the Commission should encourage stakeholders to develop "voluntary industry-wide standards, including on issues such as encryption and other security measures."⁵⁰

⁴⁶ See NCTA at 2-3.

⁴⁷ See, e.g., CTIA at 15; NCTA at 3-4.

⁴⁸ See *ACS Further Notice*, 26 FCC Rcd at 14840-41, App. F; see also Letter from Gregg Vanderheiden, Director IT Access RERC, Co-Director Telecommunications Access RERC, Trace R&D Center, University of Wisconsin-Madison, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-213, at 1-3 (June 17, 2011).

⁴⁹ 47 U.S.C. § 617(e)(1)(B).

⁵⁰ *ACS Order*, 26 FCC Rcd at 14600 ¶ 103.

VII. COMMENTERS LARGELY AGREE THAT THE COMMISSION SHOULD REJECT THE PROPOSAL TO INCLUDE “ELECTRONICALLY MEDIATED SERVICES” WITHIN THE DEFINITION OF PERIPHERAL DEVICES

Commenters are largely in agreement that that the definition of “peripheral devices” should not be amended to include “electronically mediated services.”⁵¹ The current definition of peripheral services is modeled on the Commission’s well-understood definition of the same term under Section 255 of the Communications Act.⁵² Amending the definition to include the ambiguous and empty phrase “electronically mediated services” will only cause uncertainty and confusion regarding the obligations of covered entities.⁵³ More fundamentally, the Commission should not include a category of “services” (electronically mediated or otherwise) within the definition of a category of “devices” (peripheral or otherwise).⁵⁴ Without a commonly understood meaning for “electronically mediated services,” neither the Commission nor other stakeholders can adequately consider the proposal other than to dismiss it.

⁵¹ See CTIA at 24; Microsoft at 10-11; NCTA at 7-8.

⁵² Compare 47 C.F.R. § 14.10(r) (“The term peripheral devices shall mean devices employed in connection with equipment, including software, covered by this part to translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities.”) with 47 C.F.R. § 6.3(g) (“The term peripheral devices shall mean devices employed in connection with equipment covered by this part to translate, enhance, or otherwise transform telecommunications into a form accessible to individuals with disabilities.”).

⁵³ Commenters supporting the inclusion of “electronically mediated services” have failed to provide any meaningful definition of the term. See Consumer Groups at 11-12.

⁵⁴ See NCTA at 8.

VIII. CONCLUSION

As detailed above and in CEA's initial comments, CEA urges the Commission to adhere closely to the statutory framework established in Title I of the CVAA.

Respectfully submitted,

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