

**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
)	

**REPLY COMMENTS
OF
T-MOBILE USA, INC.**

Luisa L. Lancetti
Steve Sharkey
Harold Salters
Shellie Blakeney

T-MOBILE USA, INC.
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 654-5900

March 14, 2012

TABLE OF CONTENTS

SUMMARY AND INTRODUCTION.....	2
DISCUSSION.....	4
I. THE COMMISSION SHOULD IMPLEMENT SECTION 718 OF THE ACT CONSISTENTLY WITH SECTIONS 716 AND 717.	4
II. THE WIRELESS INDUSTRY’S PROGRESS TOWARD ACHIEVING “INTEROPERABILITY” OF VIDEO CONFERENCING SERVICES IS UNDERWAY AND SHOULD BE ENCOURAGED.	5
III. THE COMMISSION SHOULD NOT IMPOSE ACS ACCESSIBILITY REQUIREMENTS ON VIDEO MAIL OR OTHER NON-REAL TIME SERVICES.	7
IV. COMMENTERS LARGELY AGREE THAT CHANGES TO THE PERFORMANCE OBJECTIVES ARE UNNECESSARY.....	8
CONCLUSION	9

**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
)	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile respectfully replies to initial comments filed regarding the above-captioned further notice of proposed rulemaking (the “*FNPRM*”).¹ The *FNPRM* seeks comment on specific issues related to Sections 716 through 718 of the Communications Act of 1934, as amended (the “Act”), which govern the accessibility of advanced communications services (“ACS”).² The Twenty-First Century Communications and Video Accessibility Act of 2010

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) (“*FNPRM*”). Comments short-cited in this reply refer to comments filed on or about February 13, 2012, in the above-captioned docket.

² See 47 U.S.C. §§ 617-619.

(“CVAA”)³ added these sections to the Act. In the *ACS Report & Order*,⁴ the Commission adopted a comprehensive set of implementing rules for ACS on October 7, 2011, when it also released the *FNPRM*.

SUMMARY AND INTRODUCTION

The initial comments show the ongoing commitment of wireless service providers and equipment suppliers to ACS accessibility.⁵ For T-Mobile, providing accessibility to ACS is a priority that we are seeking to fulfill in multiple innovative and flexible ways.⁶ To promote such progress, T-Mobile urges the Commission to continue its implementation of the CVAA provisions in a manner that balances the twin goals of accessibility and flexibility in devising accessibility solutions.

The Commission should reject proposals that seek to limit industry flexibility in providing accessibility solutions.⁷ Such proposals are contrary to the CVAA’s carefully

³ See *Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-260, 124 Stat. 2751 (as amended by Pub. L. No. 111-265, 124 Stat. 2795 (2010)).

⁴ 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 Report & Order*”).

⁵ See, e.g., CTIA Comments at 2, 10-11; CEA Comments at 8.

⁶ T-Mobile offers solutions that meet its customers’ multiple communications needs, including through innovative Internet Protocol (“IP”)-based offerings. For example, the Sidekick 4G, a hearing aid-compatible (“HAC”) handset runs on the Android platform, which provides many features to aid accessibility, such as multiple screen reader options.

⁷ See, e.g., Telecommunications for the Deaf and Hard of Hearing, Inc. *et al* (“Advocacy Groups”) Comments at 3-6; Rehabilitation Engineering Research Center on Telecommunications Access and Rehabilitation Engineering Research Center on Universal Interface and IT Access (“RERCs”) Comments at 1-3 (numbered from first page of text).

calibrated legal framework⁸ supporting industry's efforts to improve both the accessibility of ACS and to continue the innovation that has marked the U.S. wireless industry.

To this end, the Commission should promote end user accessibility to ACS by providing ACS service providers and other industry participants with flexibility to meet the CVAA's accessibility goals, as follows:

- The Commission should implement Section 718 of the Act consistent with its approach to implementing Sections 716 and 717, with an interim phase-in period of at least two years from the effective date of the new rules;
- Because the wireless industry's progress toward achieving "interoperability" of video conferencing services is well underway, the Commission should not adopt rules that prematurely affect the marketplace;
- The Commission should not impose ACS accessibility requirements on video mail or other non-real time services; and
- Consistent with the views of many of the commenters, the Commission should retain the performance objectives adopted in the *ACS Report & Order*.

⁸ Section 716 requires providers of "advanced communications services" ("ACS") and manufacturers of equipment used for ACS to make their services and products accessible to people with disabilities "if doing so is achievable." See *Twenty-First Century Communications and Video Accessibility Act of 2010*, S. Rep. No. 111-386 at 7 (2010). Section 717 establishes related recordkeeping and enforcement requirements. See 47 U.S.C. § 618. Section 718 requires, for telephones used with mobile service that include an Internet browser, that manufacturers and service providers ensure that the functions of the included browser are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. See 47 U.S.C. § 619.

These sections, and other provisions of the CVAA, also expressly provide flexibility to covered service providers and manufacturer, designed to permit industry to continue to develop innovative forms of ACS while achieving accessibility.

DISCUSSION

I. THE COMMISSION SHOULD IMPLEMENT SECTION 718 OF THE ACT CONSISTENTLY WITH SECTIONS 716 AND 717.

T-Mobile agrees with CTIA and others regarding the focused nature of Section 718, which states in relevant part:

If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B)) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable....⁹

Section 718 thus is a stand-alone provision for addressing the accessibility of certain mobile browsers specifically for blind or visually impaired users.¹⁰

The record supports implementation of Section 718 by using the *ACS Report & Order's* approach to accessibility under Section 716, including the Commission's test for what is "not achievable,"¹¹ as well as the recordkeeping and enforcement rules that the Commission has adopted pursuant to Section 717.¹²

Implementation of Section 718 consistent with Sections 716 and 717 is essential to permit covered entities to integrate their compliance activities for mobile browsers with their

⁹ 47 U.S.C. § 619(a). Section 718 also includes exceptions to this obligation, as well as provisions for industry flexibility. *See* 47 U.S.C. § 619(b).

¹⁰ *See* CTIA Comments at 16; CEA Comments at 5-7.

¹¹ *See* 47 C.F.R. § 14.10(b).

¹² *See id.* §§ 14.31-14.52.

compliance activities for ACS.¹³ This approach will minimize confusion and facilitate effective implementation for covered entities and consumers alike.

As with the implementation of Section 716, T-Mobile agrees that there should be at least a two-year phase-in period for compliance with the Commission's final rules implementing Section 718.¹⁴ Although Section 718 itself will take effect on October 8, 2013, service providers and manufacturers will not know the content of the implementing rules for Section 718 until the Commission adopts them in a future order and releases them to the public. In turn, service providers and handset makers cannot begin designing products to comply with the final Section 718 rules until they receive notice of what the rules actually will be. Thus, compliance with the recordkeeping rules for Section 718 should be required one year after the Section 718 rules generally become effective. Compliance with the accessibility (as opposed to recordkeeping) rules under Section 718 should not be required until two years after the release of the order establishing the rules.

II. THE WIRELESS INDUSTRY'S PROGRESS TOWARD ACHIEVING "INTEROPERABILITY" OF VIDEO CONFERENCING SERVICES IS UNDERWAY AND SHOULD BE ENCOURAGED.

The Commission should reject arguments that the statutory definition of "interoperable video conferencing service"¹⁵ (one form of ACS) is so broad that it means "simply any service that allows users to communicate with each other via video conference in real time."¹⁶ This interpretation effectively reads the term "interoperable" – which was added during the legislative

¹³ See TIA Comments at 4-5; CEA Comments at 8-9.

¹⁴ See CEA Comments at 9-10.

¹⁵ See 47 U.S.C. § 153(27).

¹⁶ See Advocacy Groups Comments at 7; see also RERCs Comments at 3.

process leading to the CVAA¹⁷ – out of the definition altogether. T-Mobile agrees that there is no support for such a reading of the CVAA. The term “interoperable” must be given effect, as with all terms used in the CVAA.¹⁸ In doing so, the Commission should consider marketplace developments and industry efforts regarding video conferencing services and ensure its actions will not chill innovation in this important area for consumers.

The record is clear that video conferencing services do not yet exist that are interoperable across networks and platforms.¹⁹ As CTIA explains, however, the wireless industry has already started developing interoperability guidelines that could result in a common platform for video communications.²⁰ Such a common platform would be a strong basis for viable interoperable video conferencing services in the mobile space.

To permit the development of interoperable video conferencing service in a way that best serves consumers, including those with disabilities, the Commission should avoid narrow definitions of such services that would unnecessarily skew current industry initiatives.²¹ In particular, the Commission should not specify the “protocols” or other technical standards

¹⁷ See CEA Comments at 12 n.41 (comparing CVAA § 101, as enacted, with H.R. 3101, 111th Cong. § 101).

¹⁸ See, e.g., CTIA Comments at 6 (noting that Congress created definitions in the CVAA “meant to capture services and technologies as they developed in the market”); CEA Comments at 12.

¹⁹ See CTIA Comments at 7 (stating that because video conferencing services and applications are still developing, interoperability among such services has not yet been achieved); TIA Comments at 7.

²⁰ See CTIA Comments at 10-11.

²¹ In particular, T-Mobile agrees that in defining “interoperable,” the Commission should not conflate the interoperability issues in the consumer marketplace for video conferencing and the separate regulatory issues involving Video Relay Service. See CEA Comments at 13-15; CTIA Comments at 9-10 n. 17.

associated with video conferencing service. Such an action would be contrary to Section 716,²² again, industry's activities in this area make this type of step unnecessary.

III. THE COMMISSION SHOULD NOT IMPOSE ACS ACCESSIBILITY REQUIREMENTS ON VIDEO MAIL OR OTHER NON-REAL TIME SERVICES.

The Commission should reject arguments that it should exert ancillary jurisdiction over non-real time services like video mail.²³ The terms of the CVAA prevent the Commission from expanding the definition of “interoperable video conferencing service,” which is defined in pertinent part as a “service that provides real-time video communications, including audio”²⁴ to include video mail or other non-real time services.

The Commission cannot use ancillary authority to “evade statutory limitations on the Commission’s direct authority.”²⁵ The specific limitation of “interoperable video conferencing service” in the CVAA to “real-time” service precludes the Commission from applying its accessibility regulations under Section 716 to non-real time video services like video mail.

Moreover, the record fails to support arguments that applying 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 services.”²⁶ Both interoperable video conferencing services and video mail are in their infancy. The Commission should monitor the

²² See 47 U.S.C. § 617(e)(1)(D).

²³ See, e.g., Advocacy Groups Comments at 10-11; RERCs Comments at 7-8.

²⁴ See 47 U.S.C. § 153(27).

²⁵ CTIA Comments at 12 and n.25 (citing, e.g., *American Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995); *Louisiana Pub. Serv. Com’n v. FCC*, 476 U.S. 355, 385 (1986); and *Motion Picture Ass’n of America v. FCC*, 303 F.3d 796, 807 (D.C. Cir. 2002)).

²⁶ See Advocacy Groups Comments at 10.

development of video mail, but it should not seek to impose regulations – even accessibility regulations – on this nascent service. Moreover, the situation is far different from 1999, when the Commission applied accessibility regulations to voice mail.²⁷ Unlike video mail today, voice mail in 1999 was a widely used service offered in conjunction with voice services. As the Commission noted then, “[o]ften all that is available at the other end of the line is an automated voicemail or menu system which is not accessible to or usable by people with disabilities.”²⁸ This simply is not the case with current video mail systems.

IV. COMMENTERS LARGELY AGREE THAT CHANGES TO THE PERFORMANCE OBJECTIVES ARE UNNECESSARY.

While a variety of changes to the existing performance objectives have been proposed, including the RERC Proposal discussed in the *FNPRM*,²⁹ the Commission should move cautiously and not adopt them at the present time. As CTIA has noted, new performance objectives could limit covered entities’ flexibility to implement and comply with the ACS rules.³⁰ For example, the RERC Proposal could impose additional testing requirements on devices, such as handsets, that may be subject to rules under both Section 255 and Section 716. In addition, the RERC Proposal may be inconsistent with the Commission’s hearing aid compatibility rules.³¹

²⁷ See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, 16 FCC Rcd 6417, 6458-59 ¶¶ 100-102 (1999).

²⁸ *Id.* at 6459 ¶ 102.

²⁹ See *FNPRM*, 26 FCC Rcd at 14843-49, App. G (“RERC Proposal”); Advocacy Groups Comments at 12-13.

³⁰ See CTIA Comments at 24-25.

³¹ Compare RERC Proposal, 26 FCC Rcd at 14847 (“Non interference with hearing technologies”) with 47 C.F.R. § 20.19(b)(1), (c)(2).

The performance objectives adopted in the *ACS Report & Order* serve their purpose well, and permit covered entities to satisfy them in a variety of ways. At least for now, the Commission should retain those performance objectives, which are similar to those in the Commission's time-tested Part 6 rules.³²

Moreover, although the Architectural and Transportation Barriers and Compliance Board ("Access Board" or "Board") is currently considering standards and guidelines in this area,³³ its process is not yet complete. The Commission should wait until the Access Board completes its work before considering whether to adopt any of the Board's standards or guidelines as a performance objective under Section 716.

CONCLUSION

The record demonstrates that the Commission should adopt rules pursuant to the *FNPRM* that incorporate the flexibility for service providers specifically provided by the CVAA.

Respectfully submitted,

T-MOBILE USA, INC.

By: /s/ Luisa L. Lancetti
Luisa L. Lancetti
Steve Sharkey
Harold Salters
Shellie Blakeney
T-MOBILE USA, INC.
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 654-5900

March 14, 2012

³² Compare 47 C.F.R. § 14.21(b)-(d) with *id.* §6.3(a)-(b), (l); see also CEA Comments at 19-20.

³³ See *Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards*, Advance Notice of Proposed Rulemaking, Access Board Docket No. 2011-07, RIN No. 3014-AA37, 76 Fed. Reg. 76640 (Dec. 8, 2011).