

To Whom it May Concern:

As a current law student and former accessible technology specialist, I read with interest your proposed rulemaking statement regarding sections 716, 717, and 718 of the Twenty-First Century Communications and Video Accessibility Act of 2010. In particular, I feel the need to comment on the idea that a permanent small entity exemption from the requirements of these sections be self-executing. Such an exemption—if deemed necessary—should only be granted to those businesses that have applied to the FCC for relief from the Act's requirements. My views on this subject are driven by two interrelated concerns: notification and awareness.

Notification

Until this fall, I worked in the accessible technology office of a major university. My office was responsible for providing technology-driven solutions to integrate students with a wide range of disabilities (including visual, cognitive, and mobility) into the university. My student-clients often approached me with questions about new software and hardware, including video communications technologies. They were excited about the expressed potential of various tools or reports they had received from their professors or classmates, but wanted to know whether—and to what extent—the technology was adaptable to their needs. Occasionally my office was able to procure the tool and test it; more often I would resort to research on fora where others in the community were trying to answer the same question. Answers I gave were sometimes frustratingly qualified by my lack of concrete information. Students purchased new tools somewhat at their peril.

Unfortunately, there were also times when students would come to me a week or so into the semester frustrated with a particular tool one of their professors had excitedly chosen to employ in his classroom. One dimension or another would be difficult or impossible for the student to access. After long exchanges with the professor concerned and the manufacturer of the tool, my office was able to provide a suitable accommodation, but the process was involved, time-consuming, and imposed costs on the student (who had to improvise in the interim until a viable accommodation emerged).

In both situations, my clients suffered from a lack of information (on their part, their professors', and mine) about various emergent technologies. A self-executing exemption would perpetuate this problem. One of the most important things communications regulations can provide is reliable information about which emerging technologies are accessible enough to be employed on a broad scale. Simple statements from companies, placed in public record, that they do not intend to meet FCC accessibility requirements due to their size would help both individuals and institutions such as my former employer make purchasing decisions to meet their own needs or other disability rights legislation.

The Act itself addresses the need for comprehensive accessibility information in section 717, requiring manufacturers to keep records of their accessible design efforts. 47 USCA § 618(a)(5). If an exemption to section 716 were self-executing, individuals who filed complaints for noncompliance under 47 USCA § 618(a)(3)(A) would not have a sufficient record upon which to rely. Companies who had not kept proper records might be in violation of the act, or they might simply have been validly operating as small business concerns within the SBA rules (or whatever criteria ultimately frame the exemption). In either case, the uncertainty would ultimately impose costs on whomever investigated any complaint (either individuals, in the case of formal complaints, or the public, as the FCC must investigate informal complaints under 47 USCA § 618(a)(3)(B)). Self-executing exceptions, raised in the course of an enforcement proceeding, would prevent the Act from providing consumers with comprehensive, reliable information on which to base their purchases. They would also require consumers to consider aspects of the manufacturer in question's business (revenue, capital, number of employees) not self-evidently related to the technical specifications of the product.

Awareness

Usually, companies with whom I spoke either had not considered the accessibility issues related to their product, had not realized the extent to which their design choices affected individuals with certain disabilities, or informed me that accessible modifications had been delayed in development and were “coming soon.” In each case, the result was the same--my office made great effort to create a solution that resolved a single instance of an endemic problem. Our solutions kept students learning, but were often specific to one type of course content, or even the needs of one particular individual. Accessibility technology specialists trade tips on how to deal with such particularized situations, but over and over again a great deal of work happens in individual cases whenever the designers of a broader technological system make simple decisions without considering accessible design.

I understand the need for an exception to section 716. Particularly in emerging fields of technology, small, agile startups need the freedom to continue to innovate without added bureaucratic costs. However, requiring manufacturers to make a simple prospective statement that they do not intend to comply with the Act because they meet the conditions for exception should be “achievable” (under 47 USCA § 617(g)) for even the smallest businesses. And without a self-executing exception, every manufacturer of technology within the Act’s reach would at minimum be aware of society’s expectation that they design accessibly unless able to show hardship.

Conclusion

Finally, requiring at least a minimum statement from manufacturers would itself serve the Act’s purposes. The goal of the Act is “to increase the access of persons with disabilities to modern communications.” 124 Stat 2751. Considered as a whole, the modern communications system is composed of multiple, competing, intertwined products and standards. In order to compete, manufacturers provide descriptions of the benefits and feature sets of their products. These descriptions rarely include information crucial to individuals with accessibility needs. Such individuals often have a very difficult time navigating the various options available in the modern communications system. Rather than being auxiliary to section 716, by requiring some degree of reporting from all manufacturers section 717 may provide substantive benefits of its own. It can only provide them, though, if all compliant manufacturers are required to make some sort of public statement. This will not happen if section 716’s exception is self-executing.

Thank you for your time,
-Sam Halpert