Before the
Federal Communications Commission
Washington, DC

In the Matter of:	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	

Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA)
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via electronic filing
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Summary

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (collectively, "Consumer Groups"), the Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA), and Professor Clayton Lewis applaud the Commission's decision to take head on the critical issue of the future of the open Internet—perhaps the most critical and profound telecommunications policy issue of the past decade. In doing so, we urge the Commission to bear in mind the impact of the rules it adopts on people who are deaf or hard of hearing.

In particular, the retention and improvement of transparency rules—including disclosures in accessible formats—will improve the ability of consumers who are deaf or hard of hearing to make informed decision about broadband services that will serve their needs. We also endorse bars on blocking and paid prioritization, which threaten to deny people who are deaf or hard of hearing access to telecommunications services on equal terms.

In implementing the rules, we encourage the Commission to consider the impact of its legal framework—whether Title II or Section 706—on accessibility policy. In particular, reinstating Title II coverage would afford the Commission substantial additional flexibility in promulgating accessibility policy, and we encourage the exclusion of several Title II provisions with accessibility dimensions from any forbearance strategy.

Finally, we urge the Commission to consider the impact of the enterprise and premise operator exceptions on accessibility and ensure they do not facilitate violations of federal or state accessibility law. We also urge the Commission to consider the disproportionate impact of data caps on people who are deaf or hard of hearing, who depend on data-intensive applications for basic communications.

Table of Contents

Discussion

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (collectively, "Consumer Groups"), the Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA), and Professor Clayton Lewis respectfully comment on the *Notice of Proposed Rulemaking* ("*NPRM*") in the above-referenced docket.[2] Consumer Groups seek to promote equal access for the 48 million Americans who are deaf, hard of hearing, late-deafened, deaf-blind, or deaf with mobility or cognitive disabilities to the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution. As advocates for technology and telecommunications policy that advances the public interest, RERC-TA and Professor Lewis strongly support the Consumer Groups' goal of ensuring that the fruits of an open Internet are accessible to all Americans—including those with disabilities.

At this moment, more than one million commenters have made their voices heard on the *NPRM*, which raises critical and profound issues about the future of the Internet.[3] Our comments do not attempt to cover the vast waterfront of issues raised by the *NPRM*, but simply highlight the unique ramifications of open Internet rules for the deaf and hard of hearing community and for the Commission's approach to accessibility policy. In particular, we support the adoption of robust transparency rules and bans on blocking

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[2] *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, GN Docket No. 14-28, 29 FCC Rcd. 5561 (May 15, 2014) ("*NPRM*"), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-61A1_Rcd.pdf

[3] Brian Fung, *FCC: Over 1 million comments have now been filed on net neutrality*, The Switch, The Washington Post (July 17, 2014, 2:07pm), http://www.washingtonpost.com/blogs/the-switch/wp/2014/07/17/fcc-over-1-million-comments-have-now-been-filed-on-net-neutrality/.

and paid prioritization. We also highlight the potential positive impact of reinstating Title II treatment of broadband services with appropriate forbearance on the Commission's ability to ensure the accessibility of broadband services. Finally, we urge the Commission to carefully examine the role of data caps and the enterprise and premise operator exceptions to its rules.

I. Retaining and improving transparency rules will improve the ability of consumers who are deaf or hard of hearing to access the Internet on equal terms.

We support the Commission's proposal to retain and improve the rules that require broadband providers to "publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding the use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings."[4] In particular, we agree with the Commission's assessment that transparency in the provision of broadband services "help[s] end users make informed choices regarding the purchase and use of broadband services and increase end users' confidence in broadband providers' practices."[5]

These disclosures are particularly critical for Internet users who are deaf or hard of hearing. In particular, consumers who are deaf or hard of hearing often rely on high-performance applications with particular bandwidth and latency requirements, such as video conferencing, telephony, and relay services, to communicate with family members, friends, and co-workers. Moreover, the increasingly frequent imposition of data caps by

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[4] *See NPRM*, 29 FCC Rcd. at 5584-85, ¶¶ 63-65 (citing *Preserving the Open Internet*, Report and Order, GN Docket No. 09-191, WC Docket No. 07-52, 25 FCC Rcd. 17,905, 17,936, ¶ 53 (2010) ("*Open Internet Order*"), *aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

[5] *NPRM* at 5585-86, ¶ 66 (citing *Open Internet Order*, 25 FCC Rcd. at 17,936-37, ¶ 53).

broadband providers may preclude consumers who are deaf or hard of hearing from being able to fully utilize broadband service to communicate on equal terms with their hearing peers. Finally, consumers with disabilities suffer from lower rates of employment and may be particularly sensitive to the cost of broadband service.[6]

Without detailed information about the performance, limitations, and cost of a particular service, consumers who are deaf or hard of hearing cannot fairly assess whether particular the service will meet their needs. Accordingly, we support the continuation of disclosure requirements. We further support the extension of the disclosure requirements to mobile broadband services, upon which people who are deaf or hard of hearing increasingly rely as their primary communications network.[7]

We also support the Commission's proposals to require disclosure of critical service information to edge providers, who rely on such information in developing accessible content, applications, services, and devices upon which people who are deaf or hard of hearing depend, and information about network conditions, which may be responsible for interrupting critical communications services for consumers who are deaf or hard of hearing.[8] These disclosures are especially important for Video Relay Service ("VRS") providers that provide special video conferencing and telephony software used exclusively by people who are deaf or hard of hearing and Captioned Telephone Service ("CTS") providers that supply special voice and text call software and equipment.

Finally, in considering the content and form of disclosure, the Commission should ensure that service disclosures are made available in accessible formats.[9] Moreover, the

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[6] H.R. Rep. 111-563 at 19 ("people with disabilities suffer disproportionately higher rates of unemployment and poverty than those without disabilities").
[7] *See NPRM*, 29 FCC Rcd. at 5591-92, ¶¶ 84-85.
[8] *See id.* at 5589, 5590-91 ¶¶ 75-76, 81-83.
[9] *See id.* at 5587-88, ¶ 72

Commission should ensure that providers are capable of explaining to consumers who are deaf or hard of hearing the extent to which the performance and limitations of a service will impact the use of common accessible telecommunications services, such as video conferencing, telephony, and relay services, and ensure that customer representatives are trained in handling inquiries about accessible telecommunications.

II. A no-blocking rule would help ensure the availability of accessible telecommunications services for consumers who are deaf or hard of hearing.

We urge the Commission to ensure that broadband providers cannot block particular applications, types of applications, or transmission formats.[10] As the Commission is aware, AT&T blocked the use of Apple's FaceTime, a popular video conferencing application, from use over its mobile network in 2012.[11] AT&T also blocked Google Hangouts video calls over its network in 2013.[12]

Users who are deaf or hard of hearing routinely use FaceTime, Hangouts, and similar off-the-shelf video conferencing and telephony applications to communicate with each other using American Sign Language (ASL) or speech-reading. To those users, these applications are a primary means of communications, on the same level as voice calling for hearing people—and blocking such applications is akin to blocking voice calls, an action that the Commission should not tolerate. Users who are deaf or hard of hearing should be able to utilize their choice of off-the-shelf or accessible communications applications without fear of whether their networking provider will block those

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[10] *See id.* at 5593, ¶ 89.
[11] *See id.* at 5575-76, ¶ 41.
[12] *E.g.*, SlashGear, Google+ Hangouts video chat faces FaceTime-like AT&T block (May 15, 2013), http://www.slashgear.com/google-hangouts-video-chat-faces-facetime-like-att-block-15282284/.

applications, regardless of the reason, and the Commission should implement rules to ensure this situation does not occur.[13]

Accordingly, we are concerned about the Commission's proposal to permit broadband providers to degrade applications to a "minimum level of access" in lieu of a full-throated no-blocking rule.[14] A "minimum level of access" rule would open the door to a two-tiered Internet, placing users who are deaf or hard of hearing that depend on performance-intensive video and other applications to communicate at the mercy of their broadband providers' willingness to negotiate with the users' application providers of choice—and the ability of those providers to pay for sufficient access. This ability to pay is especially in doubt for niche providers that serve primarily the market of people with disabilities and have little mainstream market penetration, such as relay service providers, remote interpreting services, and other innovative accessibility services. To ensure access for both users who are deaf or hard of hearing and application providers on equal terms, the Commission should strongly consider its alternative approach of banning priority arrangements.[15]

Given the increased reliance by consumers who are deaf or hard of hearing on wireless services to accessing video and other critical applications on mobile devices, the Commission should also extend its no-blocking rule to mobile broadband services, including WiFi hotspots provided both by wired broadband providers and by mobile

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[13] We acknowledge that some extremely bandwidth-constrained providers, such as wireless Internet service providers (WISPs) in areas with limited spectrum and backhaul availability, may have legitimate reasons to throttle or block video services. However, we believe the Commission can address this concern on a case-by-case basis through waivers or under the "reasonable network management" exception. *See* discussion *infra*, Part III & n.19.

[14] *See NPRM*, 29 FCC Rcd. at 5593, ¶ 89.

[15] *See id.*

broadband providers for off-loading purposes.[16] People who are deaf or hard of hearing people often must make rely on WiFi hotspots and mobile services to make video calls from airports, coffee shops, restaurants, libraries and other public places, and should not face barriers to doing so simply because they are not able to access a wired broadband connection.

We also support the Commission's proposal to bar broadband providers from blocking non-harmful end-user devices. These devices may include video phones, captioned telephones, tactile displays, and other apparatuses used by consumers who are deaf or hard of hearing, including those who are also blind or visually impaired or have mobility, cognitive, or physical disabilities.

III. The Commission should bar paid prioritization while ensuring that Internet-based services and applications are accessible to consumers who are deaf or hard of hearing.

Consistent with our concerns about blocking, we urge the Commission to adopt a rule that prevents the paid prioritization of edge providers. Again, we are concerned that the Commission's proposal to allow "commercially reasonable" discrimination will serve to enable a two-tiered Internet that hampers the development of cutting-edge applications by edge providers, including cutting-edge, high-performance accessible applications created by developers who cannot afford to pay for prioritized treatment.[17] Accordingly, we join many other organizations and members of the public in urging the Commission to adopt more full-fledged protections that ensure a level playing field for edge providers by banning paid prioritization arrangements, including on mobile broadband services.

We also take this opportunity to express our concern over the reported contentions of at least one broadband provider that the Commission should facilitate "fast lanes"—

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[16] *See id.* at 5598-99, ¶¶ 105-08.
[17] *See id.* at 5599, ¶ 110.

essentially permitting paid prioritization—for the sake of accessibility.[18] While we strongly believe that Internet-based services and applications must be made accessible, we also believe that doing so is possible on an open network and without the need for broadband providers to specifically identify traffic from accessibility applications and separate it out for special treatment.

To the extent that accessibility-specific applications implicate non-commercial prioritization concerns such as quality-of-service guarantees, we believe those concerns likely can be addressed on the same terms as other, similar applications through the Commission's case-by-case approach to its exception for reasonable network management.[19] *In no case should accessibility considerations form a basis for permitting paid prioritization more broadly*, and the Commission should reject any overture to the contrary.

IV. Title II reclassification would afford the Commission additional flexibility to ensure that broadband services are accessible, and the Commission should exclude accessibility-related Title II provisions from forbearance if it reclassifies.

We recognize that significant debate exists over whether the Commission should implement rules to ensure an open Internet using its authority under Section 706 of the Telecommunications Act of 1996 ("1996 Act") or by reclassifying broadband providers as "telecommunications services" subject to common carrier regulation under Title II of the Communications Act of 1934 ("1934 Act").[20] In general, we believe the Commission should adopt whatever legal regime most effectively facilitates the implementation of the rules consistent with the principles we have outlined in these comments.

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[18] *See* Erika Eichelberger, *Verizon Says It Wants to Kill Net Neutrality to Help Blind, Deaf, and Disabled People*, Mother Jones (June 13, 2014), *available at* http://www.motherjones.com/politics/2014/06/verizon-comcast-net-neutrality-blind-deaf-disabled.

[19] *See NPRM*, 29 FCC Rcd. at 5583, ¶ 61 (citing *Open Internet Order,* 25 FCC Rcd. at 17,952, ¶¶ 82-83).

[20] *See id.* at 5610, ¶ 142.

We urge the Commission, however, to consider the impact of its decision beyond the scope of the basic open Internet rules—and in particular on critical telecommunications accessibility policy. We commend the Commission's efforts over the past three decades to ensure that telecommunications services are accessible to people who are deaf or hard of hearing.

However, we emphasize that Title II reclassification would afford the Commission substantial additional flexibility to ensure that broadband services are accessible to people with disabilities. This additional flexibility is likely to prove particularly important as the telecommunications system moves from the public switched telephone network ("PSTN") to Internet Protocol ("IP")-based networks and diverse telecommunications modes emerge that substitute the Internet for the PSTN.

Indeed, many of the statutory provisions that afford the Commission authority to ensure accessibility specifically apply to Title II telecommunications services. Most importantly, Section 255 of the 1996 Act requires "providers[s] of *telecommunications service[s]* [to] ensure that the service[s] [are] accessible to and usable by individuals with disabilities, if readily achievable."[21] Similarly, Title IV of the ADA affords the Commission authority to ensure that services offered by common carriers are accessible through availability of relay services.[22]

Moreover, many of the more general provisions governing common carriers have unique accessibility dimensions. For example, the Commission has ruled that "[s]ervice problems [with telephone service in rural or high-cost localities] could be particularly problematic for TTY and amplified telephones used by persons with hearing disabilities"

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[21] 47 U.S.C. § 255(c) (emphasis added).
[22] *See generally* 47 U.S.C. § 225.

and might constitute violations of Section 202 of the 1996 Act as well as Section 255.[23] Section 251 also requires telecommunications carriers to construct their networks consistent with the accessibility mandates of Section 255 and Section 256's coordination requirements for interconnectivity, which require the Commission to ensure "the ability of users," including those with disabilities, "to seamlessly and transparently transmit and receive information between and across telecommunications networks."[24] Section 214 also serves to ensure that carriers do not abruptly discontinue service to people who rely upon it—a critical provision for people who are deaf or hard of hearing who depend on telecommunications services for emergency and other communications.[25] Collectively, these and other provisions have significant impacts on the ability of people who are deaf or hard of hearing to access telecommunications networks.[26]

As it stands, many these provisions are limited to Title II telecommunications services, except to the extent the Commission has extended them to other services through its Title I ancillary jurisdiction or other statutory sources of authority, such as the advanced communications services and IP-based relay provisions of the Twenty-First Century Communications and Video Accessibility Act ("CVAA")—mechanisms that are limited in scope and leave gaps that Title II coverage could help fill.[27]

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[23] *See Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, WC Docket No. 07-135, 27 FCC Rcd. 1351, 1357-58, ¶ 14 (2012).
[24] *See id.*
[25] *See generally* 47 U.S.C. § 214.
[26] *See generally* FCC, *The Telecommunications Act of 1996 and People with Disabilities*, *available at* http://www.fcc.gov/encyclopedia/telecommunications-act-1996-and-people-disabilities (last visited July 18, 2014).
[27] *See, e.g.*, *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, 6455-61, ¶¶ 93-106 (1999) ("*255 Order*") (asserting ancillary jurisdiction to extent Section 255 to voicemail and interactive menu service); 47 U.S.C. §§ 616-620. *But see* 255 Order, 16 FCC Rcd. at 6461, ¶¶ 107 (declining to assert ancillary jurisdiction more broadly).

While a comprehensive survey of the impact of reclassification on the Commission's existing body of accessibility policy is beyond the scope of these comments, we believe in general that reclassification would afford the Commission substantial additional flexibility to ensure that broadband services are interoperable, widely deployed, and accessible to people who are deaf or hard of hearing. Indeed, the Commission has expressly lauded support for importing Section 255 to broadband service.[28] By way of example, we believe reclassification could help the Commission address some of the following problems by leveraging Section 255 and other sources of statutory authority in the context of broadband services:

- **Lack of interoperability for non-voice media and services.** The only commonly interoperable communications medium is narrowband voice via the PSTN. Internet-based video, real-time text, and text messaging services are commonly implemented in a way that does not facilitate interoperability with other services. In the migration to IP networks, many of Title II's accessibility protections for telephone services—including interoperability—will be lost if the Commission cannot migrate them. The Commission has yet to adopt accessibility requirements for interoperable video conferencing services.[29] At the same time, relay services remain in their own silos and only interoperate via voice.[30] These issues contribute to a marked lack of access to telecommunications services, and many people who are deaf or hard of hearing must undertake additional efforts

[28] *Framework for Broadband Internet Service*, Notice of Inquiry, GN Docket No. 10-127, 25 FCC Rcd. 7866, 7895, ¶ 68 (2010).

[29] *See generally Implementation of Sections 716 and 717 of the Communications Act of 1934*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, 26 FCC Rcd. 14,557, 14,576-79, 14,684-87, ¶¶ 46-51, 301-305 (2011).

[30] *See id.* at 14,685-86, ¶ 302.

to communicate with their hearing peers because mainstream services often do not interoperate with accessible services.

- **Lack of support for accessible non-voice media and services in mainstream terminals.** Even where accessible non-voice media are supported by a service in principle (such as video relay services, captioned telephony, and real-time text communications), they are relegated to special-purpose terminals that are used only by people who are deaf or hard of hearing and which in many cases cannot even be purchased by hearing people because they are subject to certification that their users are deaf or hard of hearing. This situation presents barriers to direct communications between people who are deaf or hard of hearing and their hearing counterparts—friends, family members, co-workers, and fellow community members—and results in an overreliance on relay service operators, who do not always have the qualifications and training to render conversations accurately, particularly for communication about complex subjects.
- **Lack of support for simultaneous real-time text and voice.** Both services and terminals exist that support simultaneous real-time text and voice as part of the same call—a critical service for people who rely on TTYs or TTY-like functionality, including VCO phones. However, regulations to ensure their general support and interoperability depends on the Commission's jurisdiction over broadband services. Simultaneous real-time text and voice are a well-specified as part of next-generation 9-1-1, but the Commission has not yet taken action to ensure the provision of corresponding terminals and services to end-users for emergency and for general communication. Without such action, voice and real-time text capability that was available on the PSTN will be lost in the transition to IP networks.

- **Lack of built-in terminal accessibility.** Mainstream terminals not only lack support for accessible non-voice media, but frequently include inaccessible user interfaces, particularly for people who are deaf or hard of hearing and have additional mobility, cognitive, or visual disabilities. Even niche terminals that have been specifically designed for people who are deaf or hard of hearing, such as video relay service phones and captioned telephones, still exhibit accessibility barriers of this kind.
- **Connectivity of terminals and services with assistive technology.** People who rely on assistive listening technology are currently faced with a panoply of inconsistent means through which to connect Internet-enabled telecommunications terminals to hearing devices or other assistive listening devices—if such connection is even possible. Unlike the contexts of PSTN and wireless services, there are no applicable standards for HAC and amplification. Moreover, because of the lack of standardization and harmonization, people with disabilities are also unable to connect alerting devices for incoming calls, including vibrating alerts, and flashing lights.
- **Connectivity of special-purpose equipment with wireless and IP networks.** We have received reports that standalone analog and IP captioned telephones do not work reliably on telephone services that are provided via wireless base stations. As a result, consumers who avail themselves of wireless landline replacements in rural areas may be unable to use the accessible equipment that they have come to depend on.

In sum, we are concerned about the uncertain prospects of the accessibility of the media used by people with disabilities in modern telecommunications, including audio, video, and real-time text, without clear legal jurisdiction—a need the Commission recognized

in its request for proposals on the Video Access Technology Reference Platform.[31] Without ubiquitous availability of these media, ubiquitous interoperability, and ubiquitous support across a wide range of terminals, the potential of universally accessible broadband services may go unrealized, and we urge the Commission to consider how reclassification may bolster its ability to craft necessary and appropriate policies in this area.

Finally, the *NPRM* seeks comment on the extent to which the Commission should forbear from applying Title II regulations in the event that it chooses to reclassify.[32] We acknowledge and endorse the Commission's general goal of "strik[ing] the right balance between minimizing the regulatory burden on providers and ensuring that the public interest is served" through the application of forbearance to avoid inappropriately or unnecessarily applying Title II regulations to broadband services. However, we urge the Commission to exclude the relevant portions of the provisions outlined above—Sections 202, 214, 225, 251, 255, and 256—and the portions of other Title II provisions that could be used to facilitate accessibility—such as the universal service provisions of Section 254[33]—from its forbearance strategy.

V. The Commission should ensure that the enterprise services and premise operator exceptions avoid facilitating illegal discrimination against people who are deaf or hard of hearing.

Regardless of the path the Commission takes, we urge reexamination of the proposed exceptions for enterprise services and premise operators.[34] Independent of the general

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[31] *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Dockets No. 03-123 & 10-51, 28 FCC Rcd. 8618, 8644-45, ¶ 53 (June 10, 2013).
[32] *NPRM*, 29 FCC Rcd. at 5615-16, ¶¶ 153-154.
[33] *See* 47 U.S.C. § 254.
[34] *See NPRM*, 29 FCC Rcd. at 5581, ¶ 58 (citing *Open Internet Order*, 25 FCC Rcd. at 17,932, 17,935-36, ¶¶ 45, 52).

policy considerations that might justify those exceptions, we are concerned that they may facilitate violations of disability law by employers and premise operators against people with disabilities.

First, the enterprise services exception excludes service offerings to "larger organizations through customized or individually negotiated agreements."[35] Agreements that permit the blocking or prioritization of traffic may inhibit the ability of people with disabilities to use Internet-enabled assistive devices at work. Such agreements may constitute or facilitate illegal discrimination under Title I of the Americans with Disabilities Act ("ADA") or Section 504 of the Rehabilitation Act of 1973 ("Rehab Act").[36]

Second, the premises operator exception permits blocking and prioritization by "coffee shops, bookstores, airlines, and other entities when they acquire Internet service from a broadband provider to enable their patrons to access the Internet from their establishments."[37] Many of these same premises are subject to Title II or III of the ADA and are thereby barred from discriminating against people with disabilities.[38] Blocking or degrading of Internet-based services used by people who are deaf or hard of hearing, such

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[35] *Open Internet Order*, 25 FCC Rcd. at 17,932, ¶ 45.

[36] *See* 42 U.S.C. §§ 12112(a) ("No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."), 12112(b)(2)-(4), (5); 29 U.S.C. § 794(a) ("No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.").

[37] *Open Internet Order*, 25 FCC Rcd. at 17,935-36, ¶ 52.

[38] *See* 42 U.S.C. §§ 12132, 12182(a).

as video conferencing and telephony applications, while permitting the use of functionally equivalent applications for hearing people, may violate the ADA.[39]

The Commission should carefully reexamine the utilization of these exceptions by enterprises and premises subject to the ADA, the Rehab Act, and other federal and state accessibility laws. At the very least, the Commission should clarify in its final rules that neither the enterprise or premise operator exceptions applies to blocking or prioritization undertaken in violation of disability law.

VI. The Commission should ensure that the use of data caps do not result in discrimination against people who are deaf or hard of hearing.

Finally, broadband providers' increasing replacement of unlimited data plans with plans that institute "data caps" effectively limits the use of bandwidth-intensive applications on both wired and wireline broadband services by imposing quotas on bandwidth usage and charging more for additional use.[40] Data caps disproportionately impact people who are deaf or hard of hearing, who rely on both wired and wireless broadband services to use video conferencing, telephony, relay, total conversion, and other applications that require the transfer of significant amounts of data. For many people who are deaf or hard of hearing, those applications are functionally equivalent to voice calling features used by hearing people, which are often available on unlimited terms in the same plans that limit data usage. People who are deaf or hard of hearing sometimes must pay for voice services that they do not use and pay even more for extra data usage to accomplish the same level of communication. This state of affairs unfairly

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[39] We note from personal experience that the Commission itself blocks video relay calls made from its on-premise WiFi network.

[40] *See NPRM*, 29 FCC Rcd. at 5577, ¶ 45.

disadvantages people who are deaf or hard of hearing, and we urge the Commission to address it in developing its rules in this proceeding.[41]

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Although we readily acknowledge that accessibility is just one of many issues implicated in this proceeding, we applaud the Commission's continued commitment to considering the accessibility dimensions of its approach here and throughout its policymaking portfolio. We stand ready to provide further input and look forward to further developments in this proceeding.

Respectfully submitted,

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[41] *See id.*