



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

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**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON ITS  
TENTATIVE FINDINGS ABOUT THE ACCESSIBILITY OF COMMUNICATIONS  
TECHNOLOGIES FOR THE FIRST BIENNIAL REPORT UNDER THE  
TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT**

**Pleading Cycle Established**

**CG Docket No. 10-213**

**Comment Date: September 6, 2012**

**I. Introduction**

1. By this Public Notice (Notice) and consistent with the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),<sup>1</sup> the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission (FCC or Commission) hereby seeks comment on tentative findings for the first biennial report (*Report*) required by the CVAA to be submitted to Congress by October 8, 2012.<sup>2</sup> Public comment will assist the Commission in assessing the level of compliance with congressional mandates that telecommunications and advanced communications services and equipment be accessible to and usable by individuals with disabilities, the effect of related recordkeeping and enforcement requirements, and the extent to which accessibility barriers still exist with respect to new communications technologies.

2. The purpose of the CVAA is to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”<sup>3</sup> In enacting the CVAA, Congress noted that the communications marketplace had undergone a “fundamental transformation” since it last acted on these issues in 1996 when it added Section 255 to the Communications Act of 1934, as amended (hereinafter referred to as

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<sup>1</sup> Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.); Pub. L. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). The foregoing are collectively referred to hereinafter as the CVAA.

<sup>2</sup> See Section 717(b)(1) of the Communications Act, as added by the CVAA, codified at 47 U.S.C. § 618(b)(1). The Report will be submitted to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives. See also S. Rep. No. 111-386 at 9 (Senate Report); H.R. Rep. No. 111-563 at 27 (House Report) (2010) (“New section 717(b) [47 U.S.C. § 618(b)] requires the Commission to issue a report to Congress every two years assessing the level of compliance with the requirements of this Act, as well as other matters related to the effectiveness of the Commission’s complaint resolution process.”)

<sup>3</sup> Senate Report at 1; House Report at 19.

“the Communications Act” or “the Act”).<sup>4</sup> Although Section 255 addressed the accessibility of telecommunications services and equipment, Congress since concluded that people with disabilities often have not shared in the benefits of this rapid technological advancement.<sup>5</sup> Implementation of the CVAA is a critical step in addressing this inequity.

3. Following passage of the CVAA in October 2010, the Commission moved quickly to implement this landmark legislation by releasing multiple public notices and six notices or further notices of proposed rulemakings seeking comment on CVAA-related issues. In addition, it established and has since overseen the work of two advisory committees required by the CVAA, both of which completed their CVAA-assigned charges on time.<sup>6</sup> Throughout this implementation period, the agency has worked with consumer, industry, and government stakeholders to ensure effective and timely implementation of the new law. As a result, the Commission has, since passage of the new law, already released five reports and orders adopting rules to implement different provisions of the CVAA and has met every one of the CVAA deadlines for Commission action.<sup>7</sup> Resources throughout the Commission, from virtually every bureau and office within the Commission, have contributed to this effort. We understand the importance of this legislation to the millions of Americans with disabilities and we are committed to continuing to fully meet our responsibilities under the CVAA.

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<sup>4</sup> 47 U.S.C. § 255.

<sup>5</sup> Senate Report at 1-2; House Report at 19.

<sup>6</sup> See CVAA, §§ 106 (Emergency Access Advisory Committee), 201 (Video Programming and Emergency Access Advisory Committee).

<sup>7</sup> Since the enactment of the CVAA, the Commission has released the following reports and orders:

*Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, FCC 11-56, 26 FCC Rcd 5640 (2011) (establishing the National Deaf-Blind Equipment Distribution Program), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-56A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-56A1.pdf).

*Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, FCC 11-126, 26 FCC Rcd 11847 (2011) (reinstating the Commission’s video description rules, as modified by the CVAA) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-126A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-126A1.pdf).

*Contributions to the Telecommunications Relay Services (TRS) Fund*, CG Docket No. 11-47, Report and Order, FCC 11-150, 26 FCC Rcd 14532 (2011) (requiring VoIP service providers to contribute to the TRS Fund) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-150A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-150A1.pdf).

*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; 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; and In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, 26 FCC Rcd 14557 (2011) (*ACS Report and Order* and *ACS FNPRM*) (requiring accessible advanced communications services and equipment and establishing recordkeeping and enforcement requirements for entities covered under Sections 255, 716, and 718 of the Communications Act) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-151A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-151A1.pdf).

*Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, FCC 12-9, 27 FCC Rcd 787 (2012) (requiring closed captioning of video programming delivered using Internet protocol after such programming was shown on television and updating apparatus closed captioning requirements) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-9A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-9A1.pdf).

## II. Background and Scope of First Report

4. The Report that will be submitted to Congress must include the following elements:
  - (A) An assessment of the level of compliance with Sections 255 (accessibility of telecommunications services and equipment), 716 (accessibility of advanced communications services and equipment), and 718 (accessibility of Internet browsers built into mobile phones).
  - (B) An evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.
  - (C) The number and nature of complaints received pursuant to Section 717(a) (recordkeeping and enforcement obligations of service providers and equipment manufacturers that are subject to Sections 255, 716, and 718).
  - (D) A description of the actions taken to resolve such complaints, including forfeiture penalties assessed.
  - (E) The length of time that was taken by the Commission to resolve each such complaint.
  - (F) The number, status, nature, and outcome of any actions for mandamus filed and of any appeals filed.
  - (G) An assessment of the effect of the recordkeeping and enforcement requirements of Section 717 on the development and deployment of new communications technologies.<sup>8</sup>

5. *Section 255.* Section 255 of the Communications Act, enacted in 1996, requires providers of telecommunications services and manufacturers of telecommunications equipment or customer premises equipment (CPE) to ensure that such services and equipment are accessible to and usable by individuals with disabilities, if readily achievable.<sup>9</sup> When these requirements are *not* readily achievable, covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if readily achievable.<sup>10</sup> The Commission's rules implementing Section 255 govern telecommunications services, including telephone calls, call waiting, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing.<sup>11</sup> Equipment covered under Section 255 includes, but is not limited to, CPE, such as wireline, cordless, and wireless telephones, fax machines, and answering machines.<sup>12</sup> In addition, the rules implementing Section 255 cover voice mail and interactive voice response systems (phone systems that provide callers with menus of choices).<sup>13</sup> In 2007, the Commission adopted rules extending Section 255's accessibility obligations to

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<sup>8</sup> See 47 U.S.C. § 618(b)(1).

<sup>9</sup> 47 U.S.C. §§ 255(b) and (c); 47 C.F.R. Part 6 and Part 7. "Readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9).

<sup>10</sup> 47 U.S.C. § 255(d).

<sup>11</sup> See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6449, ¶ 77 (1999) (*Section 255 Order*). See also 47 C.F.R. Part 6.

<sup>12</sup> The Communications Act defines telecommunications equipment as "equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)." 47 U.S.C. § 153(52). It defines "customer premises equipment" as "equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications." 47 U.S.C. § 153(16).

<sup>13</sup> See 47 C.F.R. Part 7. See also FCC Section 255 Consumer Guide available at <http://www.fcc.gov/guides/disabled-persons-telecommunications-access-section-255>.

interconnected voice over Internet protocol (VoIP) service providers and interconnected VoIP equipment manufacturers.<sup>14</sup>

6. *Section 716.* Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to ensure that their services and equipment are accessible to and usable by individuals with disabilities, unless doing so is not achievable (defined as “with reasonable effort or expense”).<sup>15</sup> This requirement may be satisfied by: (1) building accessibility into the service or equipment;<sup>16</sup> or (2) by using third-party applications, peripheral devices, software, hardware, or CPE that is available to consumers at nominal cost and that individuals with disabilities can access.<sup>17</sup> When ensuring accessibility through either of those options is not achievable, covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, unless that is not achievable.<sup>18</sup>

7. “Advanced communications services” include: (1) interconnected VoIP service; (2) non-interconnected VoIP service; (3) electronic messaging service; and (4) interoperable video conferencing service.<sup>19</sup> In contrast to interconnected VoIP services, which enable people to make *and* receive calls to and from the public switched telephone network (PSTN), non-interconnected VoIP services include services that enable real-time voice communications either to *or* from the PSTN (but not both) or which neither begin nor end on the PSTN at all.<sup>20</sup> Electronic messaging services, such as e-mail, short message service (SMS) text messaging, and instant messaging, enable real-time or near real-time text messages between individuals over communications networks.<sup>21</sup> Interoperable video conferencing services provide real-time video communications, including audio, to enable users to share information.<sup>22</sup>

8. Section 716 of the Act does not apply to services or equipment, including interconnected VoIP services and equipment, which were subject to Section 255 on October 7, 2010.<sup>23</sup> Those services and equipment remain subject to the requirements of Section 255.<sup>24</sup> As a result, Section 716 requirements apply to providers of non-interconnected VoIP services, electronic messaging services, and interoperable video conferencing services, and to manufacturers of equipment used for these services.

9. *Section 718.* Section 718 requires mobile phone service providers and manufacturers to make Internet browsers built into mobile phones accessible to and usable by people who are blind or have

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<sup>14</sup> *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, FCC 07-110, 22 FCC Rcd 11275 (2007).

<sup>15</sup> 47 U.S.C. §§ 617(a)(1), (b)(1), (g).

<sup>16</sup> 47 U.S.C. §§ 617(a)(2)(A), (b)(2)(A).

<sup>17</sup> 47 U.S.C. §§ 617(a)(2)(B), (b)(2)(B).

<sup>18</sup> 47 U.S.C. § 617(c).

<sup>19</sup> 47 U.S.C. § 153(1). *See also* 47 C.F.R. § 14.10(c).

<sup>20</sup> 47 U.S.C. §§ 153(25), 153(36); 47 C.F.R. § 9.3.

<sup>21</sup> 47 U.S.C. § 153(19).

<sup>22</sup> 47 U.S.C. § 153(27).

<sup>23</sup> 47 U.S.C. § 617(f).

<sup>24</sup> *Id.*

a visual impairment, unless doing so is not achievable.<sup>25</sup> This requirement may be satisfied with or without the use of third-party applications, peripheral devices, software, hardware, or CPE that is available to consumers at nominal cost and that individuals with disabilities can access.<sup>26</sup>

10. *Implementation of Sections 716, 717, and 718.* On October 7, 2011, the Commission released a Report and Order adopting rules to implement Sections 716 and 717 of the Act and a Further Notice of Proposed Rulemaking addressing related matters and seeking comment on issues concerning the implementation of Section 718 of the Act.<sup>27</sup> The rules adopted by the Commission in the *ACS Report and Order* became effective January 30, 2012.<sup>28</sup> Since that date, manufacturers and service providers have been required to take accessibility into account in the design of their products and services. One year later, beginning on January 30, 2013, covered manufacturers and service providers must comply with recordkeeping requirements pertaining to the accessibility of their products and services.<sup>29</sup> Under the transition period established by the Commission, covered equipment and services must fully comply with the rules implementing Section 716 by October 8, 2013.<sup>30</sup> In accordance with the CVAA, Section 718 of the Act also becomes effective on October 8, 2013.<sup>31</sup> Finally, the associated complaint procedures established pursuant to Section 717 of the Act will be effective on October 8, 2013.<sup>32</sup>

11. *Scope of the Report.* The evaluation of compliance with Sections 716 and 718 in the *Report* will, of necessity, be circumscribed by the transition period described above. Nonetheless, the Commission, pursuant to Section 255 of the Act and its implementing rules, has established requirements and complaint procedures to ensure that telecommunications and interconnected VoIP services and equipment are accessible to and usable by individuals with disabilities.<sup>33</sup> As a result, for this first *Report*, the Commission will provide information about complaints alleging violations of Section 255 filed under those existing procedures and an assessment of industry compliance with those accessibility requirements. The Commission will also consider the extent to which initial industry efforts to comply with Section 716 have begun having an impact on the accessibility of services and equipment subject to Section 716. In addition, the Commission will consider the extent to which initial efforts to maintain accessibility-related records have begun having an impact on the accessibility of services and equipment subject to Sections 255 and 716 and on the development and deployment of new communications technologies. Finally, this *Report* will address accessibility barriers that still exist with respect to new communications technologies. This initial *Report* will not assess the accessibility of Internet browsers built into mobile

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<sup>25</sup> 47 U.S.C. § 619(a).

<sup>26</sup> 47 U.S.C. § 619(b).

<sup>27</sup> See *ACS Report and Order* and *ACS FNPRM*, 26 FCC Rcd 14557. The rules adopted in the *ACS Report and Order* are codified in 47 C.F.R. Part 14.

<sup>28</sup> The rules became effective 30 days after their publication in the Federal Register on December 30, 2011. See *ACS Report and Order* and *ACS FNPRM*, 26 FCC Rcd at 14696, ¶ 328. See also 76 Fed. Reg. 82240 (Dec. 30, 2011).

<sup>29</sup> Specifically, covered entities must keep records of their efforts to implement Sections 255, 716, and 718, including information about their efforts to consult with people with disabilities, descriptions of the accessibility features of their products and services, and information about the compatibility of these products and services with peripheral devices or specialized customer premises equipment commonly used by people with disabilities to achieve access. See 47 U.S.C. § 618(a)(5)(A). These recordkeeping requirements are effective January 30, 2013, one year after the effective date of the regulations. *Id.*

<sup>30</sup> *ACS Report and Order*, 26 FCC Rcd at 14602-03, ¶ 110.

<sup>31</sup> CVAA, § 104(b).

<sup>32</sup> 47 C.F.R. § 14.30(c); 47 C.F.R. §§ 14.32 – 14.37.

<sup>33</sup> 47 U.S.C. § 255; 47 C.F.R. Part 6 and Part 7.

phones, required under Section 718 of the Act, however, because that provision will not take effect until October 8, 2013,<sup>34</sup> and the Commission has not yet issued final rules implementing that provision.

12. Given the requirement to seek comment on our tentative findings, the time period covered by this first *Report* will be less than a full two years. Specifically, with respect to the Commission's assessment of complaints received, required by Sections 717(b)(1)(C) – (F) of the Act, this *Report* covers the time period between October 8, 2010, and December 31, 2011. Subsequent biennial reports, however, will cover a full two years each, with each report covering a period beginning January 1 of the first year and ending December 31 of the second year.<sup>35</sup>

### III. Comment Sought on Tentative Findings

13. Section 717(b)(2) of the Communications Act requires the Commission to seek public comment on its tentative findings prior to submission of its report to Congress.<sup>36</sup> To help inform the Commission's tentative findings, the Commission issued a public notice on July 12, 2012, inviting comments related to the development of the *Report*.<sup>37</sup>

14. We now seek comment on the Commission's tentative findings contained in the Attachment to this Notice. Specifically, we seek comment on whether these findings accurately represent the current state of communications technologies accessibility. To the extent commenters believe the tentative findings do not provide an accurate representation, we seek comment on why they do not and how they should be revised to do so. We also seek comment on whether and the extent to which the actions taken by industry, as described in the Attachment, have resulted in increased accessibility of telecommunications and advanced communications services and equipment. Are such services and equipment that are accessible to individuals with disabilities offered with the diverse range of low-end and high-end features, functions, and prices as is offered to the general public? What other kinds of information would help the Commission to conduct these assessments, as required by the CVAA, for the next biennial report to Congress to be submitted by October 8, 2014? In order to facilitate review of all comments, we request that commenters identify the specific findings on which they are providing comment.

### IV. Procedural Matters

15. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>38</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting

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<sup>34</sup> See CVAA, § 104(b).

<sup>35</sup> We believe it is most appropriate for these periodic reports to review complaints and other developments for the time period 1/1/20XX - 12/31/20XX+1. We find that this approach will allow the Commission adequate time to solicit public comment on the issues that it must address in such reports, consistent with Section 717(b)(2) and best achieves the CVAA's objectives.

<sup>36</sup> 47 U.S.C. § 618(b)(2).

<sup>37</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on the Accessibility of Communications Technologies for the First Biennial Report Under the Twenty-First Century Communications and Video Accessibility Act*, CG Docket No. 10-213, Public Notice, DA 12-1125, 27 FCC Rcd 7693 (2012) (*CVAA Assessment PN*) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1125A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1125A1.pdf).

<sup>38</sup> 47 C.F.R. §§ 1.1200 *et seq.*

at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).<sup>39</sup> In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).<sup>40</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

16. *Filing Requirements.* Interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>41</sup> All comments should refer to **CG Docket No. 10-213**. Please title comments responsive to this Notice as "PN Comments – CVAA Report Tentative Findings." Further, we strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of the questions in this Notice.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

17. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call

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<sup>39</sup> 47 C.F.R. § 1.1206(b).

<sup>40</sup> 47 C.F.R. § 1.49(f).

<sup>41</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Individuals with disabilities may request assistance from the Disability Rights Office to file comments in the Commission's Electronic Comment Filing System by sending an e-mail to [dro@fcc.gov](mailto:dro@fcc.gov).

18. *Additional Information.* For further information about this Public Notice, please contact Rosaline Crawford at 202-418-2075 or by e-mail to [Rosaline.Crawford@fcc.gov](mailto:Rosaline.Crawford@fcc.gov), Disability Rights Office, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

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## ATTACHMENT

### TENTATIVE FINDINGS FOR BIENNIAL REPORT TO CONGRESS AS REQUIRED BY THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010 (CVAA)

#### A. Compliance with Sections 255, 716, and 718

1. Section 717(b)(1)(A) of the Communications Act of 1934, as amended (hereinafter referred to as “the Communications Act” or “the Act”), requires the Commission to provide an assessment of the level of compliance with Sections 255, 716, and 718 of the Act.<sup>1</sup> In the *CVAA Assessment PN*, the Commission sought comment on the level of compliance with pre-existing requirements, under the Commission’s accessibility rules predating the CVAA, to make telecommunications and interconnected voice over Internet protocol (VoIP) services and equipment accessible to people with disabilities since the enactment of the CVAA on October 8, 2010.<sup>2</sup> The Commission also sought comment on the extent to which initial industry efforts to comply with the CVAA have begun to have an impact on the accessibility of non-interconnected VoIP, electronic messaging, and interoperable video conferencing services and equipment.<sup>3</sup> In addition, the Commission asked for information about compliance by service providers and equipment manufacturers with respect to ensuring access to information and documentation, training of personnel having direct contact with the public, and the inclusion of people with disabilities through all stages of product and service development.<sup>4</sup> The comments received in response to the *CVAA Assessment PN*, though sparse, helped to inform the tentative findings now subject to comment pursuant to Section 717(b)(2).<sup>5</sup>

2. *Section 255 Accessibility.* Comments on the state of compliance with Section 255 were received almost exclusively from consumer representatives.<sup>6</sup> From the perspective of the American Council of the Blind (ACB) and the American Foundation for the Blind (AFB), devices covered under Section 255 are pervasively not accessible; a state that they claim has remained constant since the passage of the CVAA.<sup>7</sup> According to ACB, the current Section 255 complaint process is inadequate, and thus has

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<sup>1</sup> 47 U.S.C. § 618(b)(1)(A).

<sup>2</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on the Accessibility of Communications Technologies for the First Biennial Report Under the Twenty-First Century Communications and Video Accessibility Act*, CG Docket No. 10-213, Public Notice, DA 12-1125, 27 FCC Rcd 7693, 7696-7697, ¶ 7 (2012) (*CVAA Assessment PN*) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1125A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1125A1.pdf).

<sup>3</sup> *CVAA Assessment PN*, 27 FCC Rcd at 7698, ¶ 9.

<sup>4</sup> *Id.*, 27 FCC Rcd at 7697, ¶ 8.

<sup>5</sup> Only four comments were filed by consumer groups and three industry parties filed comment.

<sup>6</sup> Comments were received from both industry and consumer representatives with respect to the inclusion of people with disabilities through all stages of product and service development; information, documentation, and training; and service plans, which are discussed further in paragraphs 14 to 22, below.

<sup>7</sup> See ACB Comments at 1; AFB Comments at 2 (“we would be incredulous if anyone were to conclude that the status quo of pervasive inaccessibility has changed much . . . since the Fall of 2010”). As evidence, AFB cites their comments previously filed in CVAA and other accessibility-related proceedings, and asks that those comments be formally incorporated into this proceeding. AFB Comments at 2. AFB’s view is also supported by comments filed in 2010 by other groups representing individuals who are blind or visually impaired. See, e.g., ACB Reply Comments, *State of Accessibility for Mobile Phone Devices for People Who Are Blind, Deaf Blind or Who Have Low Vision*, Docket 10-145 (Sept. 22, 2010) available at <http://apps.fcc.gov/ecfs/document/view?id=7020913421> (because “only one model of cell phone provides complete built-in accessibility . . . [and] only a select few models of smart phones are even compatible with add-on text to speech software that is often more costly than the device itself,” blind or visually impaired users are required to memorize phone numbers and specific key sequences to

discouraged consumers from filing complaints, even though “[a]ccessibility of devices covered under Section 255 is abysmal.”<sup>8</sup>

3. AFB asserts that, with respect to achieving accessibility under Section 255, “Apple’s iPhone continues to be the only smart phone providing truly equal access at no extra cost to users with vision loss” and that “accessible choices in the feature phone market are not that much more extensive.”<sup>9</sup> In discussing the implementation of Section 255 (which requires accessible feature phones), ACB also appears to credit Panasonic for its efforts to produce devices that meet the needs of people who are blind and visually impaired.<sup>10</sup> However, ACB goes on to note that those efforts have not been enough to provide this consumer market with much choice.<sup>11</sup>

4. The Hearing Loss Association of America (HLAA) notes that mainstream “non-mobile”<sup>12</sup> analog and digital phones, especially phones at lower price points, often do not incorporate ports that accept neck loops.<sup>13</sup> One commenter also asserts that some mainstream phones have speakerphone or Bluetooth features with sound quality that is inadequate for people with a significant hearing loss to understand what is being said.<sup>14</sup>

5. On the positive side, HLAA reports seeing “a steady improvement in the accessibility of both landline and mobile phones for people with hearing loss, and that is a credit to both the manufacturers and service providers who make [hearing aid compatible] phones available.”<sup>15</sup> Consumer Groups also report that the response time provided by interactive voice response phone systems has lengthened, making such systems easier for callers to use, even for deaf or hard of hearing callers who use relay services.<sup>16</sup> They also report that some deaf or hard of hearing people are able to access voice mail messages by using Google Talk, an application that transcribes messages into text using speech

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make calls, and have no access to “features such as battery status, message indicators, caller identification, and sending or receiving text messages”); National Federation of the Blind Reply Comments, *State of Accessibility for Mobile Phone Devices for People Who Are Blind, Deaf Blind or Who Have Low Vision*, Docket 10-145 (Oct. 14, 2010) available at <http://apps.fcc.gov/ecfs/document/view?id=7020916852> (“There is only *one* wireless device in the marketplace that is fully accessible to the blind user.”).

<sup>8</sup> ACB Comments at 1.

<sup>9</sup> AFB Comments at 2.

<sup>10</sup> See ACB Comments at 1.

<sup>11</sup> *Id.*

<sup>12</sup> In the *CVAA Assessment PN*, the Commission sought input on the state of accessibility of services and equipment used with the following: (1) “non-mobile” services, including, but not limited to analog and digital telephone handsets and cordless phones used with landline and interconnected VoIP services; and (2) “mobile” or wireless services, including basic phones used primarily or exclusively for voice calls and high-end wireless devices or smart phones that are used for voice, text, data and other computing capabilities. See *CVAA Assessment PN*, 27 FCC Rcd at 7696-7697, ¶ 7.

<sup>13</sup> HLAA Comments at 2.

<sup>14</sup> *Id.* HLAA and Consumer Groups note also that hearing aid compatibility ratings are not currently required by the U.S. Food and Drug Administration for hearing aids, making the task of finding a hearing aid compatible phone even more challenging for consumers. HLAA Comments at 4; Consumer Groups Comments at 7-8. “Consumer Groups” consist of the following organizations: Telecommunications for the Deaf and Hard of Hearing, Inc.; National Association of the Deaf; Association of Late-Deafened Adults, Inc.; Deaf and Hard of Hearing Consumer Advocacy Network; Cerebral Palsy and Deaf Organization; and the Technology Access Program at Gallaudet University.

<sup>15</sup> HLAA Comments at 4.

<sup>16</sup> Consumer Groups Comments at 8.

recognition technology.<sup>17</sup> Users report that this feature works fairly well for calls where the speaker can be clearly heard with minimal background noise.

6. *Section 716 Accessibility.* Comments on the state of compliance with Section 716 were received almost exclusively from industry representatives.<sup>18</sup> The Consumer Electronics Association (CEA) reports that manufacturers and providers are in the process of determining which of their equipment and services are subject to the new accessibility requirements, ensuring that their business units and product development teams understand the substantive accessibility requirements, and modifying their internal business processes and systems to perform the tasks needed to comply with the new rules.<sup>19</sup>

7. Comments of CTIA-The Wireless Association (CTIA) provide an extensive list of actions that CTIA asserts are being taken by its members to address compliance with Section 716. In general, CTIA contends that the wireless industry currently actively considers accessibility for persons with all types of disabilities, takes the necessary steps to ensure that such disabilities are considered at the beginning of product and service design, and regularly integrates accessibility considerations into their business operations.<sup>20</sup> CTIA also reports that, since the enactment of the CVAA, AT&T has incorporated “accessibility checklists” into its standard project process and expanded efforts to collaborate with handset manufacturers and third-party stakeholders on optimum accessibility specifications.<sup>21</sup> In addition, according to CTIA, Verizon Wireless is standardizing its processes to ensure that accessibility issues are considered throughout the design, build, and refresh/updates periods.<sup>22</sup>

8. Regarding specific accessibility developments, CTIA reports that wireless manufacturers have designed equipment with built-in accessibility solutions, such as text-to-speech and screen readers, hearing aid compatibility, haptic (tactile) feedback, text communications, and voice activated features.<sup>23</sup> In addition, CTIA adds:

Many wireless devices today include built-in features including visual and vibrating alerts and notifications, speakerphones, text and IM applications, tactilely discernible keypads (e.g. QWERTY) and shortcut keys, displays with adjustable brightness and font sizes, predictive text and word completion (e.g. AutoText) and spell check, multiple device form factors (e.g. touch, flip, candy bar, etc.), and, more recently, voice activated features.<sup>24</sup>

9. CTIA mentions that Blackberry® and Nokia devices include many of these features, and that the DROID™ by Motorola embeds accessibility features, such as a large backlit touch screen and keypad with raised keys.<sup>25</sup> CTIA also notes that Apple’s iPhone includes accessibility features, such as

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<sup>17</sup> *Id.*

<sup>18</sup> AFB urges the Commission “to avoid making any precipitous analysis” of the impact of the Section 716 accessibility obligations, because any such analysis at this early date would “need to rely almost exclusively on claims by covered industry players.” AFB Comments at 2.

<sup>19</sup> CEA Comments at 5.

<sup>20</sup> CTIA Comments at 16.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> CTIA Comments at 4.

<sup>24</sup> CTIA Comments at 8.

<sup>25</sup> *Id.*

screen magnification and VoiceOver screen reader technology,<sup>26</sup> and “Samsung’s Galaxy Nexus using Google’s Android operating system has preinstalled software that provides spoken, vibration and sound feedback to notify and alert users about various actions, such as launching an application, upcoming events, and receiving incoming calls.”<sup>27</sup> CTIA also reports that, in 2012, RIM introduced BlackBerry® Screen Reader, which provides audible output of the visual information displayed on the screen.<sup>28</sup>

10. CTIA explains further that wireless manufacturers, such as RIM, Inc., incorporate accessible features into their application requirements that encourage application developers to utilize built-in accessibility features.<sup>29</sup> CTIA also notes that AT&T has been developing a speech recognition application programming interface (API) that was recently opened up to developers to permit such developers to integrate the API’s speech capabilities into their applications.<sup>30</sup>

11. Wireless manufacturers, according to CTIA, also design devices to be compatible with assistive technology accessibility hardware and software solutions, such as alternate entry devices, TTYs, adaptive keyboards, screen readers, magnifiers, text-to-speech, and speech-to-text technology.<sup>31</sup> Wireless service providers, CTIA adds, are making third-party applications available to consumers to improve accessibility, particularly for individuals who are blind or visually impaired.<sup>32</sup> For example, AT&T offers Mobile Accessibility Lite for Android; Sprint, Boost Mobile, and Virgin Mobile USA offer “Wireless Accessibility” for Android users; and Verizon Wireless offers text-to-speech TALKS™ software for certain devices.<sup>33</sup>

12. Notwithstanding all of these efforts, CTIA urges the Commission to develop prospective guidelines so “wireless entities understand precisely what they must do for a product or service to be considered ‘accessible.’”<sup>34</sup>

13. Comments filed by the Consumer Groups are mixed with respect to their opinions about the availability of accessible advanced communications products and services. First, Consumer Groups express concerns about the lack of interoperable video conferencing services and inaccessible advanced communications service components of video gaming.<sup>35</sup> They also note with dismay that the iPhone 4S with Siri is not hearing aid compatible. Nevertheless, Consumer Groups applaud some industry initiatives, such as offering text/data only plans for people that cannot make voice telephone calls, and web portals linked to services for people with disabilities.<sup>36</sup> Consumer Groups further recognize Apple, Inc., as “an example of a leading manufacturer that embraces accessibility throughout many of its products by featuring universal design principles.”<sup>37</sup>

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<sup>26</sup> CTIA Comments at 9.

<sup>27</sup> *Id.*

<sup>28</sup> CTIA Comments at 8.

<sup>29</sup> *Id.*

<sup>30</sup> CTIA Comments at 7.

<sup>31</sup> *Id.* at 9.

<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Id.* at 10-11.

<sup>34</sup> *Id.* at 18. *But see* 47 C.F.R. §§ 6.3(a), 7.3(a), and 14.21(b).

<sup>35</sup> *See* Consumer Groups Comments at 9-13. *See also* Attachment at ¶ 28, *infra*.

<sup>36</sup> Consumer Groups Comments at 6.

<sup>37</sup> *Id.* The term “universal design” means “a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are

14. *Inclusion of people with disabilities through all stages of product and service development.*<sup>38</sup> Various industry associations report that their members are taking steps to consult with people with disabilities and the accessibility community.<sup>39</sup> For example, CTIA reports that AT&T has an Advisory Panel on Access and Aging.<sup>40</sup> Also according to CTIA, Verizon Wireless conducts quarterly calls with leading national disability advocates and has shared handsets with the American Foundation for the Blind Labs to evaluate and offer recommendations for their next generation of devices.<sup>41</sup> Similarly, CTIA adds, Motorola has “increased efforts to reach out regularly to disability advocacy groups, standards agencies and research organizations, and to work closely with the manufacturers of devices for people with accessibility needs.”<sup>42</sup>

15. The Telecommunications Industry Association (TIA) states that its members “have also been (and plan to continue to) liaising with the disability community to develop and share best practices and to develop standards for inclusive design.”<sup>43</sup> As an example, TIA notes that its members consulted with the disability community in the development of voluntary industry “conversational gain” standards for wireline phones.<sup>44</sup> TIA states that it is actively involved in further development of the hearing aid compatibility standard for wireless devices, and that the percentage of hearing aid compatible phones across offering tiers and models has increased over time.<sup>45</sup>

16. One consumer advocacy group, however, reports that it is “unaware of mainstream mobile phone manufacturers or service providers who include people with hearing loss in their market research, product design, testing, pilot demonstrations or product trials.”<sup>46</sup> According to HLAA, while some mobile phone manufacturers are working with non-consumer entities, such as hearing aid companies and research institutions, at least on a limited basis, manufacturers have not sought much input from HLAA about features that would make mobile phones accessible and usable for people with hearing loss since the ATIS hearing aid compatibility incubator group disbanded around 2010.<sup>47</sup>

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interoperable with assistive technologies.” 29 U.S.C. § 3002(a)(19). *See also 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; 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; and In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, 26 FCC Rcd 14557, 14620, ¶ 151 (2011) (*ACS Report and Order* and *ACS FNPRM*), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-151A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-151A1.pdf).

<sup>38</sup> *See* 47 C.F.R. §§ 6.7(b)(3), 7.7(b)(3). Beginning January 30, 2013, covered entities must keep records of information about their efforts to consult with people with disabilities. *See* 47 U.S.C. § 618(a)(5)(A).

<sup>39</sup> *See, e.g.*, CEA Comments at 5; CTIA Comments at 4; TIA Comments at 4.

<sup>40</sup> CTIA Comments at 17.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> TIA Comments at 4-5.

<sup>44</sup> TIA Comments at 5. “Conversational gain” is a new method of measuring telephone speech amplification. *Id.* at 6.

<sup>45</sup> TIA Comments at 5-6.

<sup>46</sup> HLAA Comments at 3.

<sup>47</sup> HLAA Comments at 4. The ATIS hearing aid compatibility incubator group was formed by the Alliance for Telecommunications Industry Solutions (ATIS) to “investigate performance between hearing aids (HAs) and Wireless Device (WDs) to determine methods of enhancing interoperability and usability for consumers with hearing aids in order for those in the hearing aid and cellular wireless industries to meet the requirements of the

17. *Information, documentation, and training.*<sup>48</sup> CTIA reports that it offers free 411 assistance for individuals who are blind, have low vision, dexterity disabilities, or cognitive disabilities, and provides these customers with bills and other print material in alternate formats such as in Braille and large print.<sup>49</sup> Likewise, CTIA states that it provides written material in Braille and large print for individuals who are visually impaired.<sup>50</sup>

18. CTIA claims that wireless service providers and manufacturers train and educate personnel about accessibility issues, citing AT&T's customer service center for customers with disabilities and RIM's internal training module on accessibility.<sup>51</sup> As a result, industry believes that the disability community "is better informed about the diverse range of wireless services, equipment and applications that are available to meet their needs."<sup>52</sup>

19. CTIA also claims that persons with disabilities are better informed because of CTIA's award-winning website, AccessWireless.org, and other collaborative efforts by the wireless industry and the accessibility community.<sup>53</sup> According to CTIA, the recently revamped and re-launched AccessWireless.org site features direct links to service provider and manufacturer accessibility websites; information relevant to individuals who are senior citizens, deaf or hard of hearing, blind, and physically, cognitively or speech impaired; tools for service providers' retail store employees to help customers; and other features.<sup>54</sup> In addition, "CTIA also has partnered with the Mobile Manufacturers Forum ('MMF') to bring the Global Accessibility Reporting Initiative ('GARI') to AccessWireless.org," to provide an online database that consumers can use to search for wireless handsets based on built-in accessibility features.<sup>55</sup>

20. Notwithstanding these efforts by industry, some consumers complain about the training of customer service personnel. HLAA reports that "personnel often do not know what a [hearing aid compatible] phone is or how to find which phones are [hearing aid compatible] among those the service provider sells."<sup>56</sup> As a result, consumers shopping for hearing aid compatible mobile phones in retail stores may not find what they need unless the store staff is in fact well trained and knowledgeable.<sup>57</sup>

21. *Service plans.* CTIA states that wireless service providers such as CTIA members Sprint, AT&T, T-Mobile, Verizon Wireless, and U.S. Cellular are offering voice, text, and data service plans specifically for persons with disabilities, including unlimited text or data plans or message- or data-only plans for people who are deaf, hard of hearing or have a speech disability.<sup>58</sup>

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[Federal Communications Commission]" and completed its work in November 2010. ATIS: Hearing Aid Compatibility Incubator at <http://www.atis.org/hac/index.asp> (viewed August 10, 2012).

<sup>48</sup> See 47 C.F.R. §§ 6.11; 7.11; 14.20(d).

<sup>49</sup> See CTIA Comments at 7.

<sup>50</sup> See CTIA Comments at 7.

<sup>51</sup> See CTIA Comments at 14-15.

<sup>52</sup> *Id.* at 15.

<sup>53</sup> *Id.* at 4. AccessWireless.org was a recipient of the FCC Chairman's Award for Advancement in Accessibility in 2011.

<sup>54</sup> CTIA Comments at 4.

<sup>55</sup> CTIA Comments at 13. TIA, many of whose members are also members of the MMF, notes that the FCC incorporated GARI on its Accessibility Clearinghouse website. TIA Comments at 7.

<sup>56</sup> HLAA Comments at 3.

<sup>57</sup> *Id.*

<sup>58</sup> CTIA Comments at 6.

22. Consumer Groups, however, are concerned about the growing trend towards metering and capping data plans, particularly because of the impact on deaf and hard of hearing individuals who rely on video technology for direct communication and for telecommunications through a relay service.<sup>59</sup> Consumer Groups report that some of their members are exceeding wireless monthly 2 GB and 3 GB data caps and that many are paying overage fees, which advocates predict will become a larger problem as wireless network speeds improve and video availability and use increases.<sup>60</sup> Consumer Groups contend that these increasing costs add to the higher costs that people who are deaf or hard of hearing already pay for equipment and services to achieve functionally equivalent telecommunications.<sup>61</sup> Consumer Groups and the major wireless providers are engaged in discussions about possible solutions to ensure that the deaf and hard of hearing community does not experience a significant disparity in costs.<sup>62</sup>

23. *Tentative findings on compliance with Sections 255, 716, and 718.* With respect to Section 255, based on the limited record provided in response to the *CVAA Assessment PN*, the Commission tentatively finds that, although equipment subject to this longstanding statutory obligation generally is meeting the hearing aid compatibility needs of people with hearing loss, feature phones continue to offer only limited accessibility for consumers who are blind or visually impaired. The record indicates that consumers who are blind or visually impaired have consistently and persistently expressed frustration with the overall inaccessibility of telecommunications equipment that has grown increasingly complex over time.<sup>63</sup> Although the Commission has successfully resolved some informal Section 255 complaints,<sup>64</sup> we agree with ACB that the resolution of Section 255 complaints during this reporting period does not necessarily “provide the entire picture” with respect to compliance.<sup>65</sup> The complaint data indicate that the Section 255 complaint process has resolved relatively simple complaints;<sup>66</sup> thus we find that the resolution of these types of complaints is only one factor in assessing the level of compliance with Section 255.

24. The Commission is currently without sufficient information to accurately assess the level of compliance with Section 716 of the Act. The Commission expects to be better informed after October 8, 2013, when Section 716 and the recordkeeping and enforcement provisions of Section 717 are fully effective. However, the Commission tentatively finds that industry is taking multiple steps to comply with the communications accessibility provisions of the CVAA, and we expect that such steps will result in the availability of accessible equipment used for advanced communications services with a diverse range of low-end and high-end features, functions, and prices when Section 716 is fully effective.

25. Because Section 718 is not yet effective, the Commission is unable to present tentative findings with respect to the level of compliance with that provision.

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<sup>59</sup> See Consumer Groups Comments at 13.

<sup>60</sup> *Id.* at 14.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See, e.g., Attachment at ¶ 2, *supra*.

<sup>64</sup> See Attachment at ¶¶ 35-39, *infra*.

<sup>65</sup> ACB Comments at 1.

<sup>66</sup> For example, under the Section 255 complaint process, the Commission has resolved complaints addressing accessible directory assistance, accessible customer service, modified service plans, and the provision of information in alternate formats. However, few complaints have successfully achieved the incorporation of accessible design in services and products. See Attachment at ¶¶ 36-37, *infra*.

## B. Accessibility Barriers in New Communications Technologies

26. Section 717(b)(1)(B) of the Act requires the Commission to provide an evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.<sup>67</sup> In the *CVAA Assessment PN*, the Commission noted that the CVAA does not define “new communications technologies” in this context, and sought comment on whether the scope of this inquiry may be broader than “telecommunications” and “advanced communications services” technologies covered under Section 255 and Section 716.<sup>68</sup> The Commission also sought comment on the extent to which new communications services or equipment have been deployed for the general public, the accessibility barriers that still exist with respect to these new communications technologies, and whether these barriers will be addressed by accessibility obligations under Section 716 or the mobile phone Internet browser accessibility obligations under Section 718 that will become effective on October 8, 2013.<sup>69</sup>

27. Contrary to the assertions of some commenters, we believe that our assessment of accessibility barriers with respect to “new communications technologies” should not be limited to those technologies covered under Sections 255, 716, and 718.<sup>70</sup> We also disagree with TIA that any assessment of accessibility barriers that still exist “must be evaluated by what is achievable with current technology.”<sup>71</sup> These limitations do not appear in the CVAA or its legislative history with respect to the preparation of this *Report* to Congress. Given that Congress has acted in the past, in 1996 and more recently with the CVAA, to ensure access to communications equipment and services by people with disabilities, and may do so again to the extent that “the extraordinary benefits of [ ] technological advances are [ ] not accessible to individuals with disabilities,”<sup>72</sup> we believe that adopting a narrow interpretation of the phrase “new communications technologies” in Section 717(b)(1)(B) would defeat congressional intent to ensure such access to emerging communications technologies.

28. Regarding accessibility barriers in new communications technologies, CTIA reports that its member companies offer more than 600 unique wireless devices, while consumer advocates identify only a few devices as being accessible “out-of-the-box” to individuals who are blind or visually impaired.<sup>73</sup> Consumer Groups acknowledge that new communications technologies can result in *eliminating* accessibility barriers.<sup>74</sup> For example, for individuals who are deaf or hard of hearing, the development of e-mail, text messaging, video conferencing, captioned telephones, and the mobile technologies to support these services has helped to level the communications playing field.<sup>75</sup> Nonetheless, Consumer Groups also point out that new communications technologies can *create* accessibility barriers. For example, Consumer Groups state that such new technologies as video conferencing services and advanced communications service components of video gaming are not

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<sup>67</sup> See 47 U.S.C. § 618(b)(1)(B).

<sup>68</sup> See *CVAA Assessment PN*, 27 FCC Rcd 7698-7699, ¶ 12. The CVAA legislative history is also silent on the definition or scope of “new communications technologies.”

<sup>69</sup> *Id.*

<sup>70</sup> *Contra*, CEA Comments at 8.

<sup>71</sup> See TIA Comments at 9.

<sup>72</sup> S. Rep. No. 111-386 at 1 (Senate Report); H. Rep. No. 111-563 at 19 (House Report) (2010).

<sup>73</sup> CTIA Comments at 3; Attachment at ¶ 3, *supra* (identifying Apple and Panasonic as manufacturers of accessible mobile phones).

<sup>74</sup> See Consumer Groups Comments at 2.

<sup>75</sup> *Id.*



accessible.<sup>76</sup> Consumer Groups also note the lack of vibrating alert systems across all applications that provide audible notifications of incoming messages or other communication, the inability to adjust vibration settings similar to the ability to select ringtones, and the need to make equipment used for advanced communications services compatible with residential signaling systems.<sup>77</sup>

29. *Tentative findings on accessibility barriers in new communications technologies.* The Commission believes that Congress will be better informed about the state of communications that are or are not accessible to individuals with disabilities, the impact of the CVAA, and the need for additional legislative action, if any, if the Commission's *Report* includes an account of accessibility barriers with respect to "new communications technologies" that fall within and outside the scope of the Communications Act and that can and cannot be eliminated with reasonable effort or expense.

30. Based on comments filed in response to the *CVAA Assessment PN*, we tentatively find that accessibility barriers still exist with respect to both existing and new communications technologies.<sup>78</sup> In particular, we tentatively find that, presently, new video conferencing technologies that are available for peer-to-peer and video relay services are not meeting the full communication access needs of people who communicate via American Sign Language.<sup>79</sup> Further, the Commission agrees with Consumer Groups that deployment of new communications technologies can either eliminate existing accessibility barriers or create new ones. The Commission tentatively finds that many accessibility barriers in new communications technologies will likely be addressed by industry compliance with the new accessibility requirements under Section 716 and Section 718 when those requirements are fully effective, and by the enforcement procedures mandated by Section 717 and the Commission's rules. There may, however, still be many accessibility barriers to new communications technologies that fall outside the scope of the CVAA, including, for example, video conferencing services that are not interoperable.

### C. Complaints Received Pursuant to Section 717

31. Sections 717(b)(1)(C) – (F) of the Act require the Commission to report on the following issues with respect to complaints received pursuant to Section 717(a) of the Act that allege violations of Sections 255, 716, or 718 of the Act:

- the number and nature of complaints received during the two years that are the subject of the Commission's *Report*;
- the actions taken to resolve such complaints, including forfeiture penalties assessed;
- the length of time that was taken by the Commission to resolve each such complaint; and
- the number, status, nature, and outcome of any actions for mandamus and any appeals filed.<sup>80</sup>

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<sup>76</sup> Consumer Groups Comments at 9-11 (most mainstream video conferencing services are not interoperable with each other or with videophones provided by video relay service providers, and none are able to include telecommunications relay services as part of these services); and at 12-13 (advocating for inclusion of relay services to make online gaming voice communication accessible to deaf and hard of hearing gamers). Each of these accessibility issues is the subject of pending Commission proceedings. See *ACS FNPRM*, 26 FCC Rcd at 14684-14687, ¶¶ 301-305; *Request for Comment: Petition for Class Waiver of Commission's Rules for Access to Advanced Communications Services and Equipment by People with Disabilities*; CG Docket No. 10-213, Public Notice, DA 12-760, 27 FCC Rcd 5204 (2012) (Entertainment Services Association petition for waiver of gaming equipment and services from the advanced communications services accessibility requirements) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-760A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-760A1.pdf).

<sup>77</sup> Consumer Groups Comments at 13.

<sup>78</sup> See, e.g., Attachment at ¶¶ 2, 4, and 13, *supra* (providing examples of accessibility barriers).

<sup>79</sup> See Consumer Groups Comments at 9-11.

<sup>80</sup> See 47 U.S.C. §§ 618(b)(1)(C) – (F).

32. *Existing accessibility complaint procedures.* During the period that will be covered by this *Report*,<sup>81</sup> consumers filing accessibility complaints utilized the Commission's existing informal complaint procedures, which were adopted under Section 255 of the Communications Act.<sup>82</sup> Currently, an informal accessibility complaint may be communicated to the Consumer and Governmental Affairs Bureau's (CGB) Disability Rights Office (DRO) by letter, phone call, fax, online form, or other reasonable means.<sup>83</sup> The complaint is entered into the Consumer Complaint Management System (CCMS) and is then assigned to a DRO telecommunications specialist, who forwards the complaint to and serves a Notice of Informal Complaint (NOIC) on the service provider and/or equipment manufacturer.<sup>84</sup> The provider or manufacturer has 30 days in which to respond to the NOIC.<sup>85</sup> DRO then analyzes the response. If all issues are satisfied and the consumer's satisfaction with the resolution is verified, or if DRO determines that no further action is required or that DRO can take no further action, DRO considers the matter closed and sends the consumer a close-out letter.<sup>86</sup> Under the existing complaint procedure, DRO is not authorized to impose forfeitures or take other enforcement action in response to an informal complaint alone; however, if the consumer is not satisfied with the provider's or manufacturer's response to the complaint and the DRO decision to terminate action, the consumer may file a formal complaint.<sup>87</sup> In some cases, DRO may forward the complaint to the Enforcement Bureau to determine whether a material and substantial question remains with respect to compliance.<sup>88</sup> If so, the Enforcement Bureau may investigate further to determine compliance and what, if any, remedial actions and/or sanctions are warranted.<sup>89</sup>

33. *Future accessibility complaint procedures.* On October 8, 2013, the complaint process will change upon full implementation of the enforcement provisions of Section 717(a).<sup>90</sup> Before filing a complaint, a consumer must make a request to DRO for dispute resolution assistance with the applicable service provider or equipment manufacturer.<sup>91</sup> If the two parties do not reach a settlement within 30 days after the filing of a request for dispute resolution assistance, the parties may agree to extend the time for dispute resolution in 30-day increments, or the requester may file an informal complaint with the

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<sup>81</sup> With respect to the Commission's assessment of complaints received, required by Sections 717(b)(1)(C) – (F) of the Act, this first *Report* will cover complaints for the time period between October 8, 2010, and December 31, 2011. Subsequent biennial reports will cover complaints for periods beginning January 1 and ending two years later on December 31.

<sup>82</sup> See 47 C.F.R. §§ 6.16 – 6.20 and 7.16 – 7.20. No formal complaints regarding accessibility were filed during the period that will be covered by this *Report*. See 47 C.F.R. §§ 6.21 – 6.22 and 7.21 – 7.22 (formal complaint procedures).

<sup>83</sup> 47 C.F.R. §§ 6.17(a) and 7.17(a).

<sup>84</sup> 47 C.F.R. §§ 6.18(a) and 7.18(a).

<sup>85</sup> 47 C.F.R. §§ 6.19 and 7.19.

<sup>86</sup> 47 C.F.R. §§ 6.18(a) – (b) and 7.18(a) – (b).

<sup>87</sup> 47 C.F.R. §§ 6.20(b), 7.20(b).

<sup>88</sup> 47 C.F.R. §§ 6.20(c), 7.20(c).

<sup>89</sup> 47 C.F.R. §§ 6.20(c) – (d), 7.20(c) – (d).

<sup>90</sup> See 47 C.F.R. §§ 14.32 (consumer dispute assistance), 14.34 – 14.37 (informal complaints), 14.38 – 14.52 (formal complaints).

<sup>91</sup> Prior to October 8, 2013, consumers may file informal complaints with DRO alleging violation of Section 255 of the Act without the prerequisite filing of a request for dispute resolution assistance.

Enforcement Bureau.<sup>92</sup> Informal complaints alleging a violation of Section 255, 716, or 718 of the Act must be filed with the Commission's Enforcement Bureau, instead of with DRO.<sup>93</sup>

34. The Commission has established minimum requirements for information that must be contained in an informal complaint, effective October 8, 2013.<sup>94</sup> The Commission will investigate the complaint and, within 180 days after the complaint was filed, will issue an order determining whether a violation has occurred.<sup>95</sup> The Commission may, in such order, or in a subsequent order, direct the service provider or equipment manufacturer to bring the service or, in the case of a manufacturer, the next generation of the equipment, into compliance with the requirements of Section 255, 716, or 718 within a reasonable period of time and take other authorized and appropriate enforcement action.<sup>96</sup> Any manufacturer or service provider that is the subject of such an order shall have a reasonable opportunity to comment on the Commission's proposed remedial action before the Commission issues a final order with respect to that action.<sup>97</sup>

## 1. Number and Nature of Complaints Received

35. From October 8, 2010, to December 31, 2011, the time period that will be covered by the *Report*, 73 informal complaints were filed with the Commission alleging violations of Section 255 of the Act or its implementing rules.<sup>98</sup> Of those complaints, approximately 33% alleged violations by equipment manufacturers and 53% alleged violations by service providers, with the remaining 14% alleging both service and equipment violations.

36. Equipment-related complaints raised a wide range of issues, illustrating difficulties encountered by consumers with various types of disabilities in obtaining accessible equipment. For example, in one informal complaint filed with the Commission, a consumer who is deaf needed a hearing aid compatible cell phone with a full keyboard, but the cell phone he had previously used was discontinued by his service provider. Another individual complained that she could not find a cell phone with the type of Bluetooth signal needed to communicate with specialized CPE. Consumers who are blind or visually impaired filed several complaints about the difficulty of locating cell phones with fully accessible features, such as an accessible contact list. Complaints related to obtaining equipment that meets the needs of consumers with multiple disabilities were also filed. Several complainants sought hearing aid compatible phones with buttons that were easy to control for individuals with dexterity disabilities due to carpal tunnel syndrome or multiple sclerosis.

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<sup>92</sup> 47 C.F.R. § 14.32(e). *See also ACS Report and Order*, 26 FCC Rcd at 14658, ¶ 237. We expect that the new dispute resolution process will resolve consumer concerns before complaints are filed and will encourage service providers and equipment manufacturers to comply with the accessibility rules.

<sup>93</sup> 47 C.F.R. § 14.34(a). On or after October 8, 2013, consumers may still file formal complaints with the Enforcement Bureau without first making requests for dispute resolution assistance. *See* 47 C.F.R. §§ 14.38 – 14.52.

<sup>94</sup> *See* 47 C.F.R. § 14.34(b).

<sup>95</sup> 47 U.S.C. § 618(a)(3)(B). The Commission shall forward the informal complaint to the service provider or equipment manufacturer. 47 C.F.R. § 14.35(a). The service provider or manufacturer must file and serve an answer to the complaint and a non-confidential summary of that answer within 20 days of service of the complaint. 47 C.F.R. §§ 14.36(b)(i) and 14.36(c). The complainant may file a reply. 47 C.F.R. § 14.36(d).

<sup>96</sup> 47 U.S.C. § 618(a)(3)(B)(i).

<sup>97</sup> 47 U.S.C. § 618(a)(4); 47 C.F.R. § 14.37(c).

<sup>98</sup> Information in the first *Report* will be limited to complaints filed under existing procedures for alleged violations of Section 255 because the complaint procedures established pursuant to Section 717(a) of the Act will not be available to consumers until October 8, 2013. *See* Attachment at ¶ 33, *supra*.

37. In complaints against service providers, the predominant issues were as follows:

- need for instructions or billing in an accessible format;
- need for accessible customer service;
- need for alternatives to an inaccessible telephone directory (*e.g.*, free directory assistance);
- requests for waiver of early termination fees when a phone that did not meet accessibility requirements was exchanged for another phone that was accessible; and
- requests to modify a bundled service plan to eliminate charges for service(s) not used due to disability (*e.g.*, phone plans with text only).

## **2. Actions Taken to Resolve Such Complaints**

38. For each complaint filed with the Commission during the period that will be covered by this *Report*, DRO forwarded the complaint to and served an NOIC on the service provider and/or equipment manufacturer alleged to have violated Commission rules. In most cases, equipment manufacturers and service providers attempted to work with consumers to resolve their particular needs. Equipment manufacturers often addressed complaints by providing the requested equipment, identifying equipment that was available as an upgrade, or informing consumers of new models that would be issued in the future. Service providers also accommodated consumers who needed accessible formats for billing, equipment instructions, and directory assistance. As a result, for a majority of complaints, DRO was able to confirm that the consumer was satisfied with the resolution.

39. For all but eight of the complaints filed, DRO verified the consumer's satisfaction with the resolution or determined that no further action was required or that DRO could take no further action, and sent the consumer a close-out letter. For two of the remaining eight complaints, DRO determined that the complaints involved issues outside the Commission's jurisdiction and referred the complainants to the U.S. Department of Justice, advising consumers of their right to file a complaint alleging violation of the Americans with Disabilities Act or other disability-related law. DRO is making best efforts to facilitate resolution of the remaining six complaints that are still pending, which involve general dissatisfaction with services or equipment or complex issues of accessibility that include determining the extent to which the accessibility requested is readily achievable.

40. The Commission did not assess any forfeiture penalties for accessibility-related violations during the period that will be covered by this *Report*.

## **3. Time to Resolve Each Complaint**

41. Under existing procedures, there is no prescribed time frame for resolving informal complaints alleging violations of Section 255. Of the 67 informal complaints that have been closed by DRO, two complaints, or about 3%, were resolved within the first 30 days after receipt. Another 41 complaints, or about 61%, were closed within 90 days. Another 22 complaints, or approximately 33%, were closed within 180 days. Two complaints, or about 3%, were closed within a year.

## **4. Actions for Mandamus and Appeals Filed**

42. There were no actions for mandamus or appeals filed with respect to Section 255 complaints during the period that will be covered by this *Report*.

## **D. Effect of Section 717's Recordkeeping and Enforcement Requirements on the Development and Deployment of New Communications Technologies**

43. Section 717(b)(1)(G) of the Act requires the Commission to provide an assessment of the

effect of the requirements of Section 717 of the Act on the development and deployment of new communications technologies.<sup>99</sup> Section 717 requires the Commission to establish new recordkeeping and enforcement procedures for service providers and equipment manufacturers that are subject to Sections 255, 716, and 718.<sup>100</sup> In October 2011, the Commission adopted these procedures,<sup>101</sup> which require service providers and equipment manufacturers to maintain records to demonstrate compliance with Sections 255, 716, and 718 when a complaint is filed.<sup>102</sup> In the *CVAA Assessment PN*, the Commission sought comment on whether service providers and equipment manufacturers have taken measures in anticipation of the new recordkeeping and enforcement requirements that will result in increased accessibility for people with disabilities.<sup>103</sup>

44. Comments in response to this inquiry in the *CVAA Assessment PN* were sparse. CTIA states that it appreciates and agrees with the Commission’s establishment of its consumer dispute assistance process as a prerequisite to the filing of an informal complaint.<sup>104</sup> CTIA reports that the wireless industry is “actively preparing and initiating measures to meet the enforcement and recordkeeping requirements of the CVAA.”<sup>105</sup> In addition, TIA states that its members “have been complying with the recordkeeping requirements.”<sup>106</sup> CEA reports that manufacturers and service providers are modifying internal recordkeeping systems to accommodate the records that the new rules require to be kept.<sup>107</sup>

45. At the same time, CTIA suggests that developing an effective recordkeeping process may require some experience with the rules and their enforcement: “CTIA appreciates the FCC’s decision to adopt a flexible approach to recordkeeping . . . [but] the lack of any guidance against which regulated entities can judge their individual recordkeeping systems places those entities at risk of being found in violation of the requirements, despite their best efforts to comply.”<sup>108</sup> As a result, CTIA urges the Commission not to penalize entities that are attempting in good faith to comply with the rules if their records are ultimately found to be insufficient or non-compliant.<sup>109</sup> In other words, CTIA urges the

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<sup>99</sup> 47 U.S.C. § 618(b)(1)(G).

<sup>100</sup> 47 U.S.C. § 618(a).

<sup>101</sup> See Attachment at ¶¶ 33 and 34, *supra*, for a description of the new enforcement procedures. Entities must certify annually to the Commission that they have kept records pertaining to the accessibility of their products beginning January 30, 2013. 47 U.S.C. § 618(a)(5)(B); 47 C.F.R. § 14.31. In response to an informal complaint, the manufacturer or service provider “must produce documents demonstrating its due diligence in exploring accessibility and achievability . . . throughout the design, development, testing, and deployment stages of a product or service.” 47 C.F.R. § 14.36(a).

<sup>102</sup> See 47 C.F.R. § 14.36(a).

<sup>103</sup> *CVAA Assessment PN*, 27 FCC Rcd at 7698, ¶ 11. Among other things, the Commission also asked to what extent the recordkeeping requirements and enforcement procedures established have increased collaboration among industry, consumers with disabilities, and other stakeholders. *Id.*

<sup>104</sup> CTIA Comments at 18.

<sup>105</sup> *Id.*

<sup>106</sup> TIA Comments at 8.

<sup>107</sup> CEA Comments at 5.

<sup>108</sup> CTIA Comments at 19. See also TIA Comments at 9 (“an established level of recordkeeping cannot easily be determined” until the Commission undertakes enforcement actions). TIA also cites this “regulatory uncertainty” as a “major barrier to accessibility” while, at the same time, it urges the Commission to afford manufacturers “maximum flexibility” in meeting the CVAA requirements. TIA Comments at 9.

<sup>109</sup> CTIA Comments at 19-20.

Commission to maintain “a flexible approach to recordkeeping requirements.”<sup>110</sup> TIA also urges the Commission to take a flexible approach in its first enforcement action to ensure that “anticipatory documentation requirements do not burden or derail the product design process.”<sup>111</sup>

46. Consumer Groups perceive “ongoing resistance by some members of the industry to incorporate and implement accessibility features” as an underlying cause of many communications accessibility barriers.<sup>112</sup> They claim that industry appears to collaborate in good faith with consumers as members of organized accessibility committees, but express frustration that this spirit of collaboration dissolves outside of those settings.<sup>113</sup> They suggest that industry requests for waiver of the accessibility rules “can lead consumer groups to question the sincerity of industry stakeholders.”<sup>114</sup> In contrast, CEA asserts that the granting of waiver requests would avoid the anticipated negative effect of the accessibility rules, including the recordkeeping and enforcement requirements of Section 717.<sup>115</sup>

47. *Tentative findings on the effect of Section 717’s recordkeeping and enforcement requirements.* Industry commenters express concerns about the anticipated burden of maintaining the records required by Section 717 to demonstrate compliance with Sections 255, 716, and 718. Yet industry commenters also report that they are already complying or preparing to comply with the new recordkeeping requirements. We tentatively find that nothing in the record indicates that Section 717’s recordkeeping and enforcement requirements will hinder the development and deployment of new communications technologies. We also find, however, that there is insufficient information to assess whether initial steps taken in anticipation of the new recordkeeping and enforcement requirements will result in the development and deployment of new communications technologies that are accessible to and usable by individuals with disabilities.

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<sup>110</sup> *Id.* at 16.

<sup>111</sup> TIA Comments at 8-9.

<sup>112</sup> Consumer Groups Comments at 2.

<sup>113</sup> Consumer Groups Comments at 3.

<sup>114</sup> *Id.* Industry requests for waiver of the accessibility rules are the subject of pending Commission proceedings. *See, e.g., Request for Comment: Petition for Class Waiver of Commission’s Rules for Access to Advanced Communications Services and Equipment by People with Disabilities*; CG Docket No. 10-213, Public Notice, DA 12-759, 27 FCC Rcd 5202 (2012) (Consumer Electronics Association petition for waiver of Internet protocol televisions and digital video players from the advanced communications services accessibility requirements) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-759A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-759A1.pdf). Further, the Consumer Groups “urge the Commission to send the message to Congress that some in the industry are refusing to embrace accessibility as a priority and to adopt universal design principles, despite the clear mandates from Congress in the CVAA.” Consumer Groups Comments at 5.

<sup>115</sup> CEA Comments at 7-8. *See also* Letter from Julie M. Kearny, Vice President, Regulatory Affairs, Consumer Electronics Association to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-213, at 2 (filed August 2, 2012), refuting Consumer Groups’ assertion that waiver petitions illustrate industry reluctance to adopt universal design principles.