



PUBLIC NOTICE

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**CONSUMER & GOVERNMENTAL AFFAIRS BUREAU AND WIRELESS
TELECOMMUNICATIONS BUREAU SEEK COMMENT ON ADVANCED
COMMUNICATION PROVISIONS OF THE TWENTY-FIRST CENTURY
COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010**

CG Docket No. 10-213

Comment Date: November 22, 2010

Reply Comment Date: December 7, 2010

I. INTRODUCTION

On October 8, 2010, the President signed into law the “Twenty-First Century Communications and Video Accessibility Act of 2010,” (“Accessibility Act” or “Act”).¹ The law’s provisions are designed to ensure that individuals with disabilities have access to emerging Internet Protocol-based communication and video programming technologies in the 21st Century.

Section 104 of Title I of the Act adds new Sections 716, 717, and 718 to the Communications Act of 1934, as amended.² New Section 716 requires the Commission, within one year after enactment, to promulgate rules providing persons with disabilities access to advanced communications services and the equipment and networks used for such services.³ This Section builds upon the policy objectives set forth in Section 255 of the Communications Act,⁴ which was added by the Telecommunications Act of 1996.⁵

¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on Oct. 8, 2010 to make technical corrections to the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act.

² Pub. L. No. 111-260, § 104 (adding new Sections 716, 717, and 718 to Title VII of the Communications Act of 1934, as amended, to be codified as 47 U.S.C. §§ 617, 618, 619). Hereinafter, we shall use the terms “the Communications Act” when referring to “the Communications Act of 1934, as amended.”

³ *See* new Section 716(e)(1) of the Communications Act, to be codified as 47 USC § 617(e)(1) (requiring the promulgation of rules within one year).

⁴ 47 U.S.C. § 255; *See* 47 C.F.R. §§ 6.1 *et seq.* Section 255 requires all manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are designed and developed to be accessible to and usable by individuals with disabilities, if readily achievable.

The purpose of this Public Notice (“Notice”) is to solicit public input on the meaning of key provisions in new Section 716, as well as ways to implement new recordkeeping obligations imposed by new Section 717 on entities subject to Sections 255, 716, and 718.⁶ In addition, this Notice seeks comment on the obligation imposed by new Section 718 on manufacturers and service providers to provide access to Internet browsers in telephones used with public mobile services by blind or visually-impaired individuals.⁷ The record received in response to this Notice will assist in the development of the Notice of Proposed Rulemaking required by the Accessibility Act.

II. SECTION 716 REQUIREMENTS

Section 716 requires providers of advanced communications services and manufacturers of equipment and software used with those services to ensure that their equipment and software offered for sale after the effective date of the rules promulgated by the Commission will be accessible to and usable by persons with disabilities, unless not achievable.⁸ We seek comment on the meaning of these requirements and specifically seek input on the issues set forth below.

1. *Advanced Communications Services.* Section 101 of Title I of the Act defines “advanced communications services” to mean (A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service.⁹ While the Commission’s rules already define interconnected VoIP service,¹⁰ the Act provides new definitions for non-interconnected VoIP service,¹¹ “electronic messaging service”¹² and “interoperable video conferencing service”¹³ We seek comment on each of these new definitions as they should apply to the provisions for accessibility, usability and compatibility contained in Section 104 of the Act. We also seek comment on the extent to which equipment used by people with disabilities for point-to-point video communications and video relay services should be considered equipment used for “interoperable video conferencing service.”

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ See *supra* note 2 and 47 U.S.C. § 255.

⁷ Although new Section 718 of the Communications Act, to be codified as 47 U.S.C. § 619, will not take effect for three years after the date of enactment, seeking comment on this Section now will afford manufacturers and service providers an opportunity to provide early input into this Section’s implementation, and make the necessary arrangements to achieve compliance by the time this provision goes into effect.

⁸ See new Sections 716(a)(1) and 716(b)(1) of the Communications Act, to be codified as 47 U.S.C. §§ 617(a)(1) and 617(b)(1).

⁹ Pub. L. No. 111-260, § 101(1) (amending Section 3 of the Communications Act).

¹⁰ 47 C.F.R. § 9.3.

¹¹ Pub. L. No. 111-260, § 101(1) (adding new Section 3(58) to the Communications Act, to be codified as 47 U.S.C. § 153(58)).

¹² *Id.* (adding new Section 3(56) to the Communications Act, to be codified as 47 U.S.C. § 153(56)).

¹³ *Id.* (adding new Section 3(59) to the Communications Act, to be codified as 47 U.S.C. § 153(59)).

2. *Achievable*. Section 104 of the Act adds the new term “achievable” to gauge compliance with the newly created Sections 716 and 718, defining this to mean “with reasonable effort or expense.”¹⁴ In determining whether the requirements of a provision are “achievable,” the Commission must consider the following factors: (1) the nature and cost of the steps needed to meet the requirements of this Section with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or provider; and (4) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.¹⁵

We seek comment on how best to provide further guidance on this new definition. Specifically, how does the “achievable” standard compare to the “readily achievable” standard set forth in Section 255 of the Communications Act?¹⁶ What does “reasonable effort and expense” mean in the context of providing access to advanced communications equipment and services? What is the best way of evaluating the extent to which a service provider or manufacturer is offering a variety of accessible services and equipment containing varying degrees of functionality and features, and offered at differing price points?

3. *Industry Flexibility*. A manufacturer or service provider may comply with the requirements of new Section 716 by building in or otherwise incorporating access features into the equipment or service needed to make that equipment or service usable by individuals with disabilities.¹⁷ Alternatively, these entities may rely on third party applications, peripheral devices, software, hardware, or customer premises equipment (CPE) that is available to individuals with disabilities at nominal cost.¹⁸ We seek comment on what type of third party applications, peripheral devices, software, hardware, or CPE might be acceptable for this purpose. We also seek comment on the definition of “nominal cost” in the context of the third party applications or other adjunct or peripheral devices, software, hardware or CPE that manufacturers and service providers can use to achieve accessibility.

4. *Compatibility*. If compliance is not achievable, manufacturers and service providers must ensure that their equipment and services are compatible with devices commonly used by persons with disabilities to achieve access, unless that is not achievable.¹⁹ We seek comment on what is meant by “devices commonly used by persons with disabilities to achieve access” and whether this phrase is limited to specialized equipment or could include mass market devices and software.

¹⁴ Pub. L. No. 111-260, § 104 (adding new Section 716(g) of the Communications Act, to be codified as 47 U.S.C. § 617(g))

¹⁵ *Id.*

¹⁶ *See* 47 U.S.C. § 255(a)(2); 47 C.F.R. § 6.3(h).

¹⁷ *See* new Sections 716(a)(2)(A) and (b)(2)(A) of the Communications Act, to be codified as 47 U.S.C. §§ 617(a)(2)(A) and (b)(2)(A).

¹⁸ *See* new Sections 716(a)(2)(B) and (b)(2)(B) of the Communications Act, to be codified as 47 U.S.C. §§ 617(a)(2)(B) and (b)(2)(B).

¹⁹ *See* new Section 716(c) of the Communications Act, to be codified as 47 U.S.C. § 617(c).

5. *Network Features, Functions, and Capabilities.* Each provider of advanced communications services has the duty not to install network features, functions or capabilities that impede accessibility.²⁰ How does this requirement compare to a similar requirement in Section 251(a)(2) of the Communications Act that relates to the guidelines and standards established pursuant to Section 255?²¹ Does this requirement take on new meaning in the context of advanced services networks?

6. *Performance Objectives.* Section 716(e)(1)(A) provides that in prescribing the regulations for this Section, the Commission shall include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities.²² We seek comment on performance objectives, including the extent to which these objectives should be specific or general. In addition, we seek comment on the usefulness of the draft standards and guidelines on Section 508 of the Rehabilitation Act, released for comment by the United States Access Board in March 2010,²³ including, for example, its guidelines on real-time text.²⁴

7. *Accessibility of Information Content.* Section 716(e)(1)(B) states that the Commission's regulations shall provide that advanced communications services and the equipment and networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks.²⁵ We seek input on how this should be implemented and the types and nature of information content that should be addressed.

8. *Obligations, Safe Harbors and Prospective Guidelines.* Sections 716(e)(1)(C) and (D) provide that the Commission shall determine obligations under this Section for manufacturers, service providers, and providers of applications or services accessed over service provider networks²⁶ and shall not mandate technical standards except as a safe harbor if necessary to facilitate the manufacturers' and service providers' compliance with the requirements of this Section.²⁷ Section 716(e)(2) also directs the

²⁰ New Section 716(d) of the Communications Act, to be codified at 47 U.S.C. § 617(d).

²¹ 47 U.S.C. § 251(a)(2). Section 251(a)(2) imposes on telecommunications carriers the duty “not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.” *Id.*

²² New Section 716(e)(1)(A) of the Communications Act, to be codified at 47 U.S.C. § 617(e)(1)(A).

²³ See United States Access Board, *Draft Information and Communication Technology (ICT) Standards and Guidelines*, (March 2010) at 80, (“Access Board Draft Guidelines”), <http://www.access-board.gov/sec508/refresh/draft-rule.pdf>. Under Section 255(e) of the Communications Act, the Access Board is required to update guidelines for the accessibility of telecommunications equipment and customer premises equipment. 47 U.S.C. § 255 (e). Accordingly, these Access Board proposals also included recommendations for updating the Section 255 guidelines. Such proposals would be relevant to this proceeding to the extent that they address access by interconnected VoIP service providers and equipment used with interconnected VoIP services

²⁴ Access Board Draft Guidelines at 80-82.

²⁵ New Section 716(e)(1)(B) of the Communications Act, to be codified at 47 U.S.C. § 617(e)(1)(B).

²⁶ New Section § 716(e)(1)(C) of the Communications Act, to be codified at 47 U.S.C. § 617(e)(1)(C).

²⁷ New Section 716(e)(1)(D) of the Communications Act, to be codified at 47 U.S.C. § 617(e)(1)(D).

Commission to issue prospective guidelines for a manufacturer or provider regarding the requirements of this Section.²⁸

What other issues are relevant to the determination of obligations of, and prospective guidelines for, these various entities? What does it mean to be a “provider of applications or services” as that term is used in this Section? Can technical standards be used as safe harbors for compliance? If there are safe harbor technical standards, to what extent should they be informed by the proposed Access Board guidelines on Section 508 of the Rehabilitation Act?²⁹

III. OTHER MATTERS AFFECTING IMPLEMENTATION OF SECTION 716

1. *Applicability of Section 255.* Section 716(f) prohibits the requirements of Section 716 from applying to equipment and services including interconnected VoIP services, that are subject to Section 255 of the Communications Act before enactment of the Accessibility Act.³⁰ We seek comment on how to address the accessibility obligations of equipment that is used to provide both telecommunications and advanced communications services. For example, to what extent should smart phones that have voice, text, and video capability – *i.e.*, some functions that fall under Section 255 and others that are subject to Section 716 – be subject to the readily achievable standard of Section 255 or the achievable standard of Section 716? We also seek comment on how to treat interconnected VoIP service, which now is covered by Sections 255 and 716.

2. *Waivers.* Section 716(h) allows the Commission to waive the requirements of Section 716 for any feature or function of equipment, or for any class of equipment, that is designed primarily for purposes other than using advanced communications services.³¹ The Commission also may exempt small entities from the requirements of Section 716.³² What factors are relevant to these waiver determinations? Are there any specific classes of equipment or services that warrant categorical waivers? Under what circumstances should small entities be exempt from these requirements?

3. *Rule of Construction.* Section 716(j) provides that Section 716 shall not be construed to require manufacturers or providers of advanced communications services “to make every feature and function of every device or service accessible for every disability.”³³ How should this requirement affect implementation? Would the requirement that the Commission adopted in the Section 255 rulemaking that manufacturers and service providers consider the extent to which accessibility features are available on every product and service, rather than more generally across product lines,³⁴ be consistent with this rule of construction?

²⁸ New Section 716(e)(2) of the Communications Act, to be codified at 47 U.S.C. § 617(e)(2).

²⁹ See *supra* note 22.

³⁰ New Section 716(f) of the Communications Act, to be codified at 47 U.S.C. § 617(f).

³¹ New Section 716(h)(1) of the Communications Act, to be codified at 47 U.S.C. § 617(h)(1).

³² New Section 716(h)(2) of the Communications Act, to be codified at 47 U.S.C. § 617(h)(2).

³³ New Section 716(j) of the Communications Act, to be codified at 47 U.S.C. § 617(j).

³⁴ See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd. 6417, 6440-41 ¶49 (Sept. 29, 1999) (*Report and Order*), published at 65 Fed. Reg. 63235, November 19, 1999

4. *Other issues.* Are there other issues, for example, regarding limitations on liability in Section 2 of the Act, the prohibition against proprietary technology in Section 3 of the Act, and the exclusion of customized equipment and services that are not offered to the public in new Section 716(i), that should affect implementation of Section 716? We seek comment on each of these new provisions.

IV. SECTION 717 REQUIREMENTS

Section 717 requires the Commission to adopt rules that facilitate the filing of formal and informal complaints alleging a violation of Sections 255, 716, or 718 and to establish procedures for enforcement actions by the Commission with respect to such violations, within one year of enactment of the law.³⁵ Section 717 also requires manufacturers and service providers subject to Sections 255, 716, and 718 to maintain records of efforts taken to implement the requirements of these Sections.³⁶ Such records are to be kept in the ordinary course of business and must include: (1) information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access.³⁷ We seek comment on this requirement, including the types of records that should be maintained for each of these categories of information. We also seek comment on possible enforcement procedures.

V. SECTION 718 REQUIREMENTS

Section 718 provides that if a manufacturer includes an Internet browser in a telephone used with public mobile services, or if a provider of mobile services arranges for the inclusion of a browser in telephones sold to customers, the manufacturer or provider must ensure that the functions of the browser are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable.³⁸ A manufacturer or service provider may comply with this requirement by incorporating such access into the telephone or service itself, or may rely on third party applications, peripheral devices, software, hardware, or CPE that is available to individuals with disabilities at nominal cost, and that individuals with disabilities can access.³⁹ We seek comment on the extent to which the requirements of Section 718 affect how to interpret and implement any of the requirements in Section 716.

VI. FILING REQUIREMENTS

Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁴⁰ interested parties may file comments and reply comments on or before the dates indicated on the first

³⁵ New Section 717(a) of the Communications Act, to be codified at 47 U.S.C. § 618(a).

³⁶ New Section 717(a)(5) of the Communications Act, to be codified at 47 U.S.C. § 618(a)(5).

³⁷ New Section 717(a)(5)(A) of the Communications Act, to be codified at 47 U.S.C. § 618(a)(5)(A).

³⁸ New Section 718(a) of the Communications Act, to be codified at 47 U.S.C. § 619(a).

³⁹ New Section 718(b) of the Communications Act, to be codified at 47 U.S.C. § 619(b).

⁴⁰ See 47 C.F.R. §§ 1.415, 1419.

page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.⁴¹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies 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 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- 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 12th Street, SW, Washington DC 20554.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

Additional Information. For further information, contact David Hu, Wireless Telecommunications Bureau, at 202-418-7120 and Karen Peltz Strauss, Consumer and Governmental Affairs Bureau at 202-418-2388

⁴¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).