



Federal Communications Commission
Washington, D.C. 20554

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Small Entity Compliance Guide

Section 718 of the Communications Act Accessible Internet Browsers on Mobile Phones

FCC 13-57
CG Docket No. 10-213
WT Docket No. 96-198
CG Docket No. 10-145

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties and damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
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fccinfo@fcc.gov

I. OBJECTIVES OF THE PROCEEDING

In the *Second Report and Order* in CG Docket No. 10-213, WT Docket No. 96-198, and CG Docket No. 10-145, the Commission adopted rules to implement section 718 of the Communications Act of 1934, as amended (Act). Section 718 (codified at 47 U.S.C. § 619) requires mobile phone manufacturers and mobile service providers that include or arrange for the inclusion of an Internet browser on mobile phones to ensure that the functions of the included browser are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable.

Specifically, the Commission affirmed that Internet browsers used for advanced communications services (ACS) that are installed by manufacturers of equipment used for ACS or provided by ACS providers are subject to the accessibility requirements prescribed by section 716 of the Act. As such, the Commission found that sections 716 and 718 have overlapping requirements with respect to ensuring the accessibility of Internet browsers.

The effective date for these new accessibility requirements under section 718 was October 8, 2013

II. COMPLIANCE REQUIREMENTS

A. Background

On October 7, 2011, the Commission released a *Report and Order* adopting rules to implement sections 716 and 717 of the Act (codified at 47 U.S.C. §§ 617 and 618, respectively), which were added to the Act by the Twenty-First Century Communications and Video Accessibility Act (CVAA).¹ Section 716 requires ACS and equipment used for ACS to be accessible to and usable by individuals with disabilities, unless doing so is not achievable. Section 717 establishes recordkeeping and enforcement requirements for entities subject to the accessibility requirements of section 255 (telecommunications services and equipment), section 716 (advanced communications services and equipment), and section 718 (Internet browsers on mobile phones).

At the same time, the Commission released a *Further Notice of Proposed Rulemaking (ACS FNPRM)* seeking comment on rules to implement section 718. The Commission raised the following issues in the *ACS FNPRM* which it addressed in the *Second Report and Order*: (1) coverage of Internet browsers under section 716 and section 718; (2) best ways to implement section 718 to achieve compliance by the time the provision goes into effect; (3) accessibility application programming interfaces (APIs); and (4) the recordkeeping requirements.

B. Coverage of Internet Browsers under Section 716 and Section 718

In the *Second Report and Order*, the Commission affirms its previous conclusion that equipment with manufacturer-installed or included Internet browsers used for ACS are encompassed within the term “equipment used for ACS” subject to the accessibility requirements of section 716. Likewise, an ACS provider is responsible for the accessibility of the underlying components of its service, including any software that it provides, such as an Internet browser. Among other things, this means that the functions of an Internet browser – for example, to enable users to input a uniform resource locator (URL) into the address bar; to identify and activate home, back, forward, refresh, reload, and stop buttons; to view status

¹ See Small Entity Compliance Guide: Twenty-First Century Communications and Video Accessibility Act 2010, DA 12-418 (March 15, 2012).

information; and to activate zooming or other features that are used for ACS – must be accessible to individuals with disabilities, unless doing so is not achievable.

In the *Second Report and Order*, the Commission concludes that Internet browsers do not “pass through” information to independent downstream devices, software, or applications, as that term is used in section 14.20(c) of the Commission’s rules. Nevertheless, the Commission notes that covered entities are not relieved of their obligations under section 716, unless doing so is not achievable. For example, if a covered entity installs or directs the installation of an Internet browser, and the browser supports a specific web standard, approved standards recommendations, or technology that includes the capabilities to support accessibility features and capabilities, it must ensure that the Internet browser can use such capabilities contained in those standards or technologies to support the intended accessibility features and capabilities in the ACS web application retrieved and displayed by the browser, unless doing so is not achievable. To the extent that an included Internet browser does not support a particular technology that is needed to make web-based information available to the general public, the Commission declines to require covered entities to ensure that such browsers support the technology solely for the purpose of achieving accessibility.

In the *Second Report and Order*, the Commission finds that, with respect to individuals with disabilities generally, section 716(a) covers manufacturers of all equipment (including mobile phones) that include an Internet browser used for ACS, and section 716(b) covers ACS providers (including mobile service providers that provide ACS) that provide or require the installation and use of an Internet browser as an underlying component of their ACS. The Commission further finds that, specifically with respect to individuals who are blind or visually impaired, section 718 covers manufacturers of mobile phones that include an Internet browser used for any purpose, as well as mobile service providers who arrange for the inclusion of an Internet browser used for any purpose.

C. Implementation of Section 718

In the *Second Report and Order*, the Commission notes that the record is scant on the best technical or other means for achieving compliance with section 718 by its effective date, October 8, 2013. However, the Commission will continue to offer whatever assistance it can to encourage effective collaboration among stakeholders in the development of solutions to the technical challenges associated with ensuring access to Internet browsers in mobile phones.

Except as otherwise noted, in the *Second Report and Order*, the Commission adopts rules for section 718 that are analogous to the Commission’s rules implementing section 716, which will reduce uncertainty and ensure a consistent regulatory approach.

Scope of Obligations. In defining the scope of obligations of mobile telephone manufacturers and mobile service providers, the Commission looked to the statute, just as it did when implementing section 716. Section 718 states the following:

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

“Accessible to and Usable by.” The Commission defines the terms “accessible” and “usable” as it has previously defined these terms when implementing sections 716 and 255 of the Act. The Commission finds that adoption of the functional approach reflected in such requirements will provide clear guidance to covered entities regarding their obligation to ensure accessibility and usability.

Product Design, Development, and Evaluation. The Commission also adopts key requirements similar to those in its section 255 and section 716 rules regarding product design, development, and evaluation. Entities subject to section 718 must consider performance objectives at the design stage as early as possible and identify barriers to accessibility and usability as part of their evaluation when considering implementation of the accessibility performance objectives. *See* 47 C.F.R §§ 14.20(a) and (b).

Information Pass Through. As previously noted, the Commission determined that browsers do not “pass through” information as that term is used in section 14.20(c) of the Commission’s rules. Therefore, the Commission declines to apply the information pass-through requirement to entities covered under section 718. Nevertheless, the Commission notes that covered entities are not relieved of their obligations under section 718, unless doing so is not achievable. A covered entity that installs or directs the installation of an Internet browser that supports a specific web standard, approved standards recommendations, or technology that includes the capabilities to support accessibility features and capabilities, must ensure that the Internet browser can use such capabilities contained in those standards or technologies to support the intended accessibility features and capabilities in the web application retrieved and displayed by the browser, unless doing so is not achievable. To the extent that an included Internet browser does not support a particular technology that is needed to make web-based information available to the general public, the Commission declines to require covered entities to ensure that such browsers support the technology solely for the purpose of achieving accessibility.

Information, Documentation, and Training. Manufacturers and service providers subject to sections 716 and 718 must ensure that information and documentation that they provide to customers are accessible, if achievable. *See* 47 C.F.R § 14.20(d).

“Achievable.” Section 716(g) of the Act defines the term “achievable” for the purposes of both section 716 and section 718 to mean “with reasonable effort or expense, as determined by the Commission” and requires consideration of four specific factors when making such determinations. In the *Second Report and Order*, the Commission defines and applies the term “achievable” to entities covered under section 718(a) in the same manner as this term is defined in section 716(g) and as it is applied to entities covered under sections 716(a)(1) and (b)(1).

Industry Flexibility. In the *Second Report and Order*, the Commission defines and applies the industry flexibility provisions contained in section 718(b) in the same manner as these provisions are defined and applied in sections 716(a)(2) and (b)(2). These provisions – which are virtually identical – allow industry the flexibility to satisfy their respective accessibility requirements with or without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment that are available to consumers at nominal cost and that individuals with disabilities can access.

Compatibility. Section 716(c) requires that if compliance with the accessibility requirements for ACS and equipment used for ACS is not achievable (either through built-in or third-party solutions), then such equipment or services must be compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless doing so is not achievable. Unlike the other provisions discussed above, where the Commission implements section 718 by adopting rules comparable to the rules adopted to implement section 716, there is no provision in section 718 parallel to section 716(c) that would demonstrate that Congress intended such a requirement for section 718. As such, the Commission finds that there is no statutory basis for imposing a

compatibility requirement for entities covered under section 718. However, the Commission notes that mobile phones that include Internet browsers are generally also subject to the compatibility requirements of both section 716(c) to the extent the mobile phones are used for ACS, such as electronic messaging, and section 255(d), to the extent the mobile phones are used for telecommunications service.

Exceptions. Section 716 provides for an exemption from the accessibility requirements for customized equipment or services, and gives the Commission authority to waive such requirements for small entities and multipurpose services and equipment. However, section 718 contains no parallel exemption or waiver provisions. Accordingly, the Commission does not find sufficient basis to establish similar exemptions and waiver provisions regarding the requirements of section 718 of the Act for entities covered under that provision. Nevertheless, the Commission notes that an entity covered by section 718 could petition for a waiver of the Commission's rules implementing section 718 pursuant to the Commission's general waiver.²

D. Accessibility Applications Programming Interfaces

An application programming interface (API) is software that an application program uses to request and carry out lower-level services performed by the operating system of a computer or telephone. An accessibility API, in turn, is a specialized interface developed by a platform owner which can be used to communicate accessibility information about user interfaces to assistive technologies. Because there are various methods to achieve compliance with the section 718 requirements, and there is a need to afford covered entities flexibility on how to comply, the Commission, at this time, does not mandate that covered entities include accessibility APIs in mobile phones. Further, the Commission declines to establish the inclusion of an accessibility API in a mobile phone as a safe harbor, at this time, for compliance with section 718.

III. RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

Section 717(a)(5)(A) of the Act requires, beginning January 30, 2013, each manufacturer and service provider subject to sections 255, 716, and 718 of the Act to maintain records of its efforts to implement sections 255, 716, and 718, including the following: (1) information about its 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 its products and services with equipment commonly used by individuals with disabilities to achieve access.

In October 2011, the Commission adopted recordkeeping requirements implementing this statutory requirement. In the *ACS FNPRM*, the Commission sought comment on whether these recordkeeping requirements should be retained or altered for entities covered under section 718. In the *Second Report and Order*, the Commission retains the recordkeeping requirements as adopted and declines to delay implementation for entities covered under section 718.

IV. INTERNET LINKS

Second Report and Order – FCC 13-57

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-57A1.doc
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-57A1.pdf
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-57A1.txt

² See 47 C.F.R. § 1.3.