



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON THE ACCESSIBILITY OF COMMUNICATIONS TECHNOLOGIES FOR THE 2018 BIENNIAL REPORT REQUIRED BY THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT

Pleading Cycle Established
CG Docket No. 10-213

Comment Date: May 3, 2018

I. Introduction

1. By this Public Notice (Notice) and consistent with requirements in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),¹ the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) seeks comment on a range of issues to inform the preparation of the biennial report required by the CVAA, which must be submitted to Congress by October 8, 2018.² Public comment will assist the Commission in assessing the level of compliance with statutory mandates for telecommunications and advanced communications services (ACS) and equipment used with these services—as well as Internet browsers built into mobile phones—to be accessible to and usable by individuals with disabilities, the extent to which accessibility barriers still exist with respect to new communications technologies, and the effect of CVAA recordkeeping and enforcement requirements on the development and deployment of new communications technologies.³

II. Background

2. Pursuant to section 255 of the Communications Act of 1934, as amended (the Act), and the Commission's implementing regulations, telecommunications and interconnected voice over Internet protocol (VoIP) service providers and equipment manufacturers must make their services and equipment accessible to and usable by individuals with disabilities, if readily achievable.⁴ The Commission has

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

² See 47 U.S.C. § 618(b)(1). The Bureau is preparing this biennial report pursuant to its delegated authority. 47 CFR § 0.361.

³ 47 U.S.C. § 618(b)(1).

⁴ 47 U.S.C. § 255; 47 CFR Parts 6, 7. The Act defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(50). It defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(53). “Interconnected VoIP

(continued . . .)

defined services covered under section 255 to include local and long distance telephone service, call waiting, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing.⁵ Equipment covered under section 255 includes, but is not limited to, customer premises equipment, such as wireline, cordless, and wireless telephones, fax machines, and answering machines.⁶ In addition, the Commission's section 255 rules cover voice mail and interactive voice response systems (phone systems that provide callers with menus of choices).⁷

3. Section 716 of the Act requires ACS providers and equipment manufacturers to make their services and equipment accessible to and usable by individuals with disabilities, unless doing so is not achievable.⁸ These requirements apply to providers of non-interconnected VoIP services, electronic messaging services, and interoperable video conferencing services, and to manufacturers of equipment used with these services.⁹ Section 718 of the Act requires Internet browsers built into mobile phones to

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service" enables people to make *and* receive calls over the Internet and the traditional telephone network and is defined in the Commission's rules as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and terminate calls to the PSTN. 47 CFR § 9.3; see also 47 U.S.C. § 153(25). When accessibility to these services is not readily achievable (defined as "easily accomplishable and able to be carried out without much difficulty or expense"), covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized equipment commonly used by individuals with disabilities to achieve access, if readily achievable. 47 U.S.C. § 255(d); 42 U.S.C. § 12181(9) (defining "readily achievable").

⁵ *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, para. 77 (1999) (*Section 255 Order*). See also 47 CFR Part 6.

⁶ 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).

⁷ *Section 255 Order*, 16 FCC Rcd 6417, 6455-6462, paras. 93-108; 47 CFR Part 7.

⁸ 47 U.S.C. § 617. See also 47 U.S.C. § 153(1) (defining ACS as "(A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service"). Although the Act's definition of ACS also includes interconnected VoIP service, the accessibility obligations of interconnected VoIP service providers and equipment manufacturers are governed by the requirements of section 255 of the Act. See 47 U.S.C. §§ 255, 617(f). Section 716 of the Act defines "achievable" to mean with reasonable effort or expense, listing four factors the Commission must consider when making such determinations. 47 U.S.C. § 617(g).

⁹ See 47 U.S.C. § 617(a)-(b), (g). Non-interconnected VoIP services include services that enable people to make *or* receive calls over the Internet and the telephone system, or enable real-time voice communications solely over the Internet. 47 U.S.C. § 153(36). Electronic messaging services enable real-time or near real-time text messages between individuals over communications networks. 47 U.S.C. § 153(19). Examples of electronic messaging services include e-mail, SMS text messaging, and instant messaging. *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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14574, para. 43 (2011) (*ACS Report and Order and ACS FNPRM*). Interoperable video conferencing services are real-time video communications, including audio, to enable users to share information. 47 U.S.C. § 153(27).

be accessible to and usable by individuals who are blind or visually impaired, if achievable.¹⁰ Section 717 of the Act requires covered entities to keep records of their efforts to implement sections 255, 716, and 718.¹¹ Section 717 also requires the Commission to investigate informal complaints alleging violations of section 255, 716, or 718 of the Act and to issue orders on the outcomes of these investigations within 180 days of their filing.¹² Before filing an informal complaint, a consumer must submit a “request for dispute assistance” (RDA) with the FCC’s Disability Rights Office, which works with the consumer and the service provider or equipment manufacturer for a minimum of 30 days to resolve the accessibility problem.¹³

4. The CVAA requires the Commission to submit a report to Congress every two years on (1) the level of compliance with the CVAA’s communications accessibility obligations; (2) the extent to which accessibility barriers still exist with respect to new communications technologies; (3) the effect of the recordkeeping and enforcement requirements on the development and deployment of new communications technologies; and (4) information about complaints received by the Commission alleging violations of its communications accessibility rules.¹⁴ The Commission submitted biennial reports to Congress in 2012, 2014, and 2016.¹⁵ After we receive comments in response to this Notice, the Bureau will prepare and seek comment on tentative findings for the 2018 report.¹⁶

III. Compliance with Sections 255, 716, and 718

5. *Accessibility.* We seek comment on the level of compliance with sections 255 and 716 to make telecommunications and ACS, as well as equipment used with these services, accessible by people with disabilities, since issuance of the *2016 CVAA Biennial Report* on October 7, 2016. Specifically, we seek 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

¹⁰ 47 U.S.C. § 619; *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*, Second Report and Order, 28 FCC Rcd 5957 (2013) (*ACS Second Report and Order*).

¹¹ 47 U.S.C. § 618(a)(5)(A). These records must include 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. *Id.*; *see also* 47 CFR § 13.41(a).

¹² 47 U.S.C. § 618(a)(3)(B).

¹³ *See* 47 CFR § 14.32.

¹⁴ 47 U.S.C. § 618(b)(1); *see also* 47 U.S.C. §§ 255, 617, 619.

¹⁵ *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 27 FCC Rcd 12204 (2012) (*2012 CVAA Biennial Report*); *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 29 FCC Rcd 11909 (2014) (*2014 CVAA Biennial Report*); *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 31 FCC Rcd 11065 (2016) (*2016 CVAA Biennial Report*).

¹⁶ *See* 47 U.S.C. § 618(b)(2).

basic phones and feature phones (collectively referred to herein as non-smartphones), as well as smartphones.¹⁷

6. For guidance on determining the state of accessibility for telecommunications and interconnected VoIP covered under section 255, we direct commenters to the definition of “accessible” contained in Parts 6 and 7 of the Commission’s rules.¹⁸ For guidance on determining the state of accessibility of ACS covered under section 716, we direct commenters to the definition of “accessible” contained in Part 14 of the Commission’s rules.¹⁹ For example, to what extent are the input, control, and mechanical functions of telecommunications services and ACS and devices used with these services locatable, identifiable, and operable (1) by people without vision, hearing, speech, or color perception; (2) by people with limited vision, hearing, color perception, manual dexterity, reach and strength, or cognitive skills; (3) by people with prosthetic devices; or (4) without time-dependent controls? How easy is it to locate accessible services and devices in retail establishments? To what extent are services and devices that are offered with a range of low-end and high-end features, functions, and prices accessible to individuals with disabilities? Where services and devices are not accessible, to what extent do service providers and manufacturers make these services and devices compatible with peripheral devices and specialized customer premises equipment commonly used by people with disabilities to achieve access?²⁰

7. When the Bureau considered these questions in 2016, it concluded that solutions were needed to make equipment used with interconnected VoIP services accessible to people who are blind or visually impaired.²¹ The Bureau also found that little, if any, progress had been made since the *2014 CVAA Biennial Report* to make non-smartphones used for telecommunications services or ACS accessible to people who are blind or visually impaired.²² In contrast, the Bureau found that the accessibility of telecommunications and ACS features and functions on smartphones and other devices had improved for people with a wide range of disabilities.²³ To inform the upcoming report, we seek comment on how access to telecommunications and ACS on these devices has changed since the *2016 CVAA Biennial Report*.

8. We also seek comment on the level of compliance with the obligations of section 718 of the Act to make Internet browsers built into mobile phones accessible for individuals who are blind or visually impaired. For guidance on determining the state of accessibility, we direct commenters to the definition of “accessible” that governs section 718 obligations, contained in Part 14 of the Commission’s rules.²⁴ For example, to what extent are the input, control, and mechanical functions of Internet browsers built into mobile phones locatable, identifiable, and operable by people without vision or with limited vision? To the extent that accessible Internet browsers on mobile phones are available, how easy is it to find them in retail establishments? To what extent are accessible Internet browsers offered in mobile phones across a range of low-end and high-end features, functions, and prices? In the *2016 CVAA*

¹⁷ We seek comment on the full range of mobile phones and other devices that are used with wireless services, including basic phones used primarily or exclusively for telecommunications, feature phones used for telecommunications, ACS, and some other functions, and smartphones that are used for voice, text, data, and other computing capabilities.

¹⁸ 47 CFR §§ 6.3(a), 7.3(a).

¹⁹ 47 CFR § 14.21(b).

²⁰ See 47 CFR §§ 6.3(b), 7.3(b), 14.20(a)(3).

²¹ *2016 CVAA Biennial Report*, 31 FCC Rcd at 11073, para. 15.

²² *Id.* at 11073, 11075, paras. 16, 21.

²³ *Id.* at 11078, para. 28.

²⁴ See 47 CFR § 14.21(b)(1)(i)-(iii), (b)(2)(i)-(iii), (b)(2)(vii).

Biennial Report, the Bureau concluded that, although there had been improvement in the accessibility of built-in Internet browsers since 2014, continued progress was needed on improving the accessibility of these browsers, particularly on low-end to mid-range devices.²⁵ How has section 718 implementation changed since 2016?

9. *Inclusion of People with Disabilities in Product and Service Design and Development.* In 2016, the Bureau concluded that consultations between covered entities and people with disabilities had improved since the *2014 CVAA Biennial Report*.²⁶ We now seek comment on the extent to which manufacturers and service providers have included people with disabilities in their market research, product design, testing, pilot demonstrations, and product trials since the *2016 CVAA Biennial Report*.²⁷ To what extent are covered entities working cooperatively with disability-related organizations in their efforts to incorporate accessibility, usability, and compatibility of equipment and services throughout their processes for product design, development, and fabrication?²⁸ Are covered entities making reasonable efforts to validate unproven access solutions through testing with people with disabilities or with organizations that have expertise with people with disabilities?²⁹

10. *Accessibility Gaps.* In the *2016 CVAA Biennial Report*, the Bureau concluded that, notwithstanding the progress made on accessibility, certain gaps remained.³⁰ In addition to the need for greater access to equipment used with interconnected VoIP services and non-smartphones for people who are blind or visually impaired,³¹ the Bureau emphasized the need to ensure that accessibility is not eliminated when systems are upgraded.³² We are particularly interested in learning the extent to which these gaps have been addressed since the *2016 CVAA Biennial Report*.

11. *Information, Documentation, and Training.* In addition to requiring accessibility, sections 255, 716, and 718 require telecommunications, ACS, and Internet browsers built into mobile phones to be *usable by* individuals with disabilities. A product or service is “usable” if individuals with disabilities have access to the full functionality and documentation for the product or service, including instructions, product or service information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities.³³ In the *2016 CVAA Biennial Report*, the Bureau concluded that industry had made notable efforts to ensure the availability of information and documentation related to covered products and services, and in training personnel on the accessibility of these offerings.³⁴ We now seek updated information on the extent to

²⁵ *2016 CVAA Biennial Report*, 31 FCC Rcd at 11078-79, para. 29.

²⁶ *Id.* at 11083, para. 43.

²⁷ See 47 CFR §§ 6.7(b)(1)-(2), 7.7(b)(1)-(2), 14.31(a)(1).

²⁸ See, e.g., 47 CFR §§ 6.7(b)(3), 7.7(b)(3).

²⁹ See, e.g., 47 CFR §§ 6.7(b)(4), 7.7(b)(4).

³⁰ *2016 CVAA Biennial Report*, 31 FCC Rcd at 11073, para. 34.

³¹ See *supra* para. 7.

³² *2016 CVAA Biennial Report*, 31 FCC Rcd at 11073, para. 34. The Bureau also noted the concerns of some commenters regarding the accessibility of ACS components in video game software. *Id.* at 11071, para. 31. The Bureau has waived the ACS accessibility requirements for video game software through December 31, 2018. See *Entertainment Software Association; Petition for Class Waiver of Sections 716 and 717 of the Communications Act and Part 14 of the Commission’s Rules Requiring Access to Advanced Communications Services and Equipment by People with Disabilities*, Order, 32 FCC Rcd 10448 (2018) (*ESA 2017 Waiver Order*).

³³ See 47 CFR §§ 6.3(l), 7.3(l), 14.21(c); see also 47 CFR §§ 6.11, 7.11, 14.20(d), 14.60(b)(4).

³⁴ *2016 CVAA Biennial Report*, 31 FCC Rcd at 11082, para. 39.

which telecommunications and ACS providers and manufacturers are ensuring the usability of their offerings through, for example, accessible user guides, bills, installation guides, and product support communications.³⁵ Similarly, to what extent are service providers and equipment manufacturers covered under section 718 ensuring access to information and documentation about the Internet browsers that are built into their mobile phones?³⁶ For example, are companies providing information in Braille and other alternate formats? To what extent are companies providing training on the accessibility of their products and services to customer service representatives, technical support personnel, and others having direct contact with the public?

12. Finally, we seek comment on any other issues relevant to assessing the level of compliance with sections 255, 716, and 718 and the Commission's implementing rules governing the accessibility and usability of telecommunications and ACS, and equipment used with these services, and Internet browsers built into mobile phones.

IV. Accessibility Barriers to New Communications Technologies

13. The CVAA requires the Commission to include, in its biennial report, an evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.³⁷ Our assessment of "new communications technologies" is not limited to telecommunications, ACS, or Internet browser technologies covered under sections 255, 716, and 718 of the Act.³⁸ Instead, we seek comment on accessibility barriers with respect to "new communications technologies" that are both within and outside the scope of the Act.³⁹ In the *2016 CVAA Biennial Report*, the Bureau acknowledged the potential for real-time text, high definition voice, and text-to-911 to improve access by people with disabilities, but concluded that barriers exist to other new technologies, such as web conferencing and video conferencing services and equipment.⁴⁰ To what extent have new types of communications services, hardware, software, applications, or plug-ins been deployed to the general public since the *2016 CVAA Biennial Report*? What accessibility barriers still exist with respect to these or other relatively new communications technologies? To what extent do new virtual and augmented reality systems incorporate ACS features that could have accessibility implications? To the extent such systems provide ACS, are efforts being undertaken to ensure its accessibility and usability? We seek comment on any other issues relevant to evaluating the extent to which accessibility barriers to new communications technologies still exist.

V. Effect of Accessibility Recordkeeping and Enforcement Requirements

14. As required by the CVAA, we seek comment on the effect of the accessibility recordkeeping and enforcement requirements, which apply to entities that are subject to sections 255, 716, and 718 of the Act, on the development and deployment of new communications technologies that fall within and outside the scope of the Act.⁴¹ In 2016, the Bureau found nothing in the record to indicate that

³⁵ See 47 CFR §§ 6.11, 7.11, 14.21(c).

³⁶ See 47 CFR § 14.60(b)(4)-(5).

³⁷ 47 U.S.C. § 618(b)(1)(B).

³⁸ See *2012 CVAA Biennial Report*, 27 FCC Rcd at 12220, para. 43.

³⁹ In the *2012 CVAA Biennial Report*, the Bureau rejected assertions that we should only consider "new communications technologies" that are not covered by the Communications Act and only those accessibility barriers that could not be eliminated with reasonable effort and expense. See *2012 CVAA Biennial Report*, 27 FCC Rcd at 12222, para. 45. Here, too, we seek comment on the full spectrum of new communications technologies.

⁴⁰ *2016 CVAA Biennial Report*, 31 FCC Rcd at 11084, 11087, paras. 45, 52.

⁴¹ See 47 U.S.C. § 618(b)(1)(G); see also *supra* note 39.

these recordkeeping and enforcement requirements had hindered the development and deployment of new communications technologies.⁴² Has this changed in any way over the past two years? What impact, if any, has the requirement for consumers to request assistance from the Bureau to resolve an accessibility problem with a covered entity (through the RDA process) as a prerequisite to filing an informal complaint had on the development and deployment of new communications technologies?

VI. 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.⁴³ 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 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). 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). 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.⁴⁴ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).⁴⁵ All comments should refer to **CG Docket No. 10-213**. Please title comments responsive to this Notice as “Public Notice Comments – Accessibility of Communications Technologies.” 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 ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

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 Street, SW, Room

⁴² 2016 CVAA Biennial Report, 31 FCC Rcd at 11091, para. 66.

⁴³ 47 CFR §§ 1.1200 *et seq.*

⁴⁴ 47 CFR §§ 1.415, 1.419.

⁴⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th 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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 844-432-2275 (videophone), or 202-418-0432 (TTY). This Notice can also be downloaded in Word and Portable Document Format (PDF) at <https://www.fcc.gov/general/disability-rights-office-headlines>.

18. *Additional Information.* For further information regarding this Notice, contact Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2075 or by e-mail to Rosaline.Crawford@fcc.gov.

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