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FCC PROPOSES TO UPDATE RULES ALLOWING ACCESSIBILITY TO ADVANCED COMMUNICATIONS TO 54 MILLION CONSUMERS WITH DISABILITIES

Washington, D.C. – As part of its ongoing efforts to implement the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA), the Federal Communications Commission issued three Notices of Proposed Rulemaking (NPRMs). The CVAA is considered the most significant piece of accessibility legislation since the passage of the Americans with Disabilities Act in 1990. The CVAA has modernized existing communications laws to ensure that people with disabilities are able to share fully in the economic, social, and civic benefits of broadband and other 21st century communication technologies.

The first of the three FCC CVAA-related NPRMs approved by the Commission seeks to ensure that the 54 million individuals with disabilities living in the United States are able to fully use advanced communications services, equipment and networks. Section 255 of the Communications Act now requires telecommunications and interconnected VoIP manufacturers to provide such access. The NPRM seeks to ensure that when Section 716 is implemented, it will fully complement Section 255. Until now, people with disabilities often have not had full access to the benefits of rapid technological changes in advanced communications. Wireless handsets have evolved into multi-media devices capable of accessing the Internet, sending emails or text messages, and enabling video conversations.

The Advanced Communications Services NPRM seeks comment on the following:

- How should the FCC implement the requirements of Section 104 of the CVAA, which creates new sections 716 and 717 of the Communications Act? It is essential that the Commission ensure that manufacturers of "advanced communications services" (ACS) equipment make their devices and products accessible to people with disabilities. In certain cases where manufacturers cannot achieve compliance by making their products or services accessible, they must ensure that their equipment and services is compatible with assistive technologies used by people with disabilities.
- Are there steps that the Commission should be taking to enhance its enforcement and recordkeeping procedures for manufacturers and providers, under Sections 255 and 716? The CVAA directs the Commission to implement new procedures in this area under Section 717.
- With section 718 taking effect in 2013, what steps can the Commission and stakeholders take to ensure that ACS manufacturers and service providers are working to make mobile phone Internet browsers accessible to people who are blind or visually impaired?

The FCC approved a second NPRM that seeks comment on reinstatement and modification of the video description rules originally adopted by the Commission in 2000. Video description is the insertion of audio-narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue. This feature makes television programming more accessible to people who are blind or visually impaired by providing them with essential information that is otherwise conveyed to the audience only visually.

This NPRM would reinstate the Commission's video description rules that were previously overturned by the U.S. Court of Appeals more than a decade ago. The enactment of the CVAA in 2010 provided the Commission with ample authority for the reinstatement of these rules.

As directed by Congress in the CVAA, the proposed rules would require:

- Large-market broadcast affiliates of the top four national networks and large multichannel video programming distributors ("MVPDs") to provide video description;
- These broadcasters to provide 50 hours per quarter of video-described primetime or children's programming, with affected MVPDs providing the same amount on each of the five most popular non-broadcast networks; and
- All network-affiliated broadcasters and all MVPDs to "pass through" any video description included in network or broadcast programming they carry. Live or near-live programming would be exempt from the proposed rules.

Finally, the FCC approved a third NPRM to implement Section 103(b) of the CVAA, which mandates that the Commission extend participation in and contribution to the Telecommunications Relay Service ("TRS") Fund to interconnected and non-interconnected Voice over Internet Protocol ("VoIP") service providers. Although interconnected VoIP service providers already contribute to the Fund under Commission rules, this would statutorily codify that practice, and further extend this obligation to non-interconnected providers. The TRS Fund compensates TRS providers for the costs of providing service to individuals with hearing and speech disabilities.

Contributions to the TRS Fund are calculated on the basis of annual interstate end-user telecommunications revenues. There is a "safe harbor" provision that permits interconnected VoIP providers to calculate their contributions on the basis of actual revenues or a traffic study, or to rely on a "safe harbor" provision that allows them to consider 64.9% of their revenues to be interstate telecommunications revenues.

The TRS Fund NPRM seeks public comment on the following:

- Should the safe harbor provision extend to non-interconnected VoIP providers?
- What revenues should be included in calculating TRS contributions, i.e., just revenues from interstate end-user calls or revenues from all sources?
- Should the FCC require VoIP providers that offer services for free and have zero enduser revenues to make any contributions to the TRS Fund?

Action by the Commission March 2, 2011, by Notice of Proposed Rulemaking (FCC 11-37, FCC 11-36, FCC 11-38) respectively. Chairman Genachowski, Commissioners Copps, McDowell, Clyburn and Baker. Separate Statements issued by Chairman Genachowski and Commissioner Copps. Docket Nos. CG 10-213, MB 11-43, CG 11-47.