

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC20554**

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| In the Matter of |) | |
| |) | |
| Implementation of Section 716 and 717 of |) | CG Docket No. 10-213 |
| the Communications Act of 1934, as |) | |
| Enacted by the Twenty-First Century |) | |
| Communications and Video Accessibility |) | |
| Act of 2010 |) | |

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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I. INTRODUCTION AND SUMMARY

The Telecommunications Industry Association (“TIA”)¹ hereby submits comments in response to the Federal Communications Commission’s (“Commission”) Public Notice,² which seeks comment from the public on the level of compliance with the Twenty-First Century Communications and Video Accessibility Act of 2010’s³ communications accessibility obligations, the extent to which accessibility barriers still exist to new communications

¹ TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design, produce, and deploy a wide variety of devices with the goal of making technology accessible to all Americans. TIA’s standards committees, which operate under an American National Standards Institute-accredited process, create consensus-based voluntary standards for numerous facets of the ICT industry.

² *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*, Public Notice, CG Docket No. 10-213, DA 12-1125 (rel. Jul. 12, 2011) (“PN”).

³ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA” or “Act”).

technologies, and other related issues. TIA supported the passage of the CVAA and commends the Commission for initiating this proceeding to help ensure that all Americans have access to advanced communications services (“ACS”) products. TIA also chairs the Emergency Access Advisory Committee, the Commission’s CVAA-created Federal advisory committee that focuses on matters pertaining to next-generation 911 access for persons with disabilities.

TIA members are committed to meeting the needs of consumers with disabilities, and are working with the disability community to deliver new accessibility products and services as quickly as possible. TIA’s member companies have taken steps to make certain that accessibility is incorporated into new product designs consistent with the CVAA, which include standard development, making aggregated information available to the public, and collaboration across the industry to make technical recommendations.

TIA’s members have initiated processes to comply with the recordkeeping requirements and will submit certifications under the CVAA as part of the transition starting April 1, 2013. However, TIA would like to stress its support of the Commission’s position that the first biennial report will not be able to evaluate compliance with the CVAA as fully effective. TIA members continue to have concerns that excessive documentation requirements could defeat the goal of encouraging the development of accessible products and services. When undertaking its first enforcement action, TIA urges the Commission to take a flexible approach where anticipatory documentation requirements do not burden or derail the product design process.

Finally, we note that regulatory uncertainty is a major barrier to accessibility, and our belief that the Commission can reduce this barrier by using a flexible approach moving forward. This flexible approach would reduce regulatory uncertainty and increase the availability of ACS products and services to disabled populations. In TIA's view, regulatory uncertainty is inversely correlated to investment and innovation, and the Commission should afford manufacturers maximum flexibility in meeting the requirements of the CVAA consistent with Congressional intent. TIA urges the Commission to set a standard of regulatory flexibility in the immediate future as it evaluates several pending class waivers covering certain gaming equipment, IP televisions and IP digital video players, and set-top boxes. In addition, finalizing requirements pursuant to the CVAA in conjunction with a phase-in period that accurately reflects product cycles will reduce barriers to accessibility.

II. EQUIPMENT MANUFACTURERS HAVE TAKEN SIGNIFICANT STEPS TO ENSURE COMPLIANCE WITH SECTIONS 255 AND 716

A. Industry Efforts to Increase Accessibility to Equipment and Services for Disabled Populations

In the PN, the Commission requests 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 and smart phones.”⁴ A large majority of TIA’s hundreds of member companies’ products are directly affected by the CVAA. TIA members are committed to ascertaining and responding to the requirements of consumers with disabilities, and are collaborating with the disability community to make new accessibility products and services available as quickly as possible.

TIA’s member companies have, as required by the Commission’s rules,⁵ begun taking steps to ensure that new product accessibility is incorporated into the product design process consistent with the CVAA. These include updating information and documentation, market research, product design, testing, pilot demonstrations, and product trials.⁶ We view the inclusion of people with disabilities, particularly those organizations with relevant expertise, to be a crucial part of this process.⁷ Industry 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

⁴ PN at ¶¶ 7-9.

⁵ See ACS Report and Order and ACS FNPRM, 26 FCC Rcd 14696, ¶ 328. See also 76 Fed. Reg. 82240 (Dec. 30, 2011).

⁶ PN at ¶ 8.

⁷ PN at ¶ 8.

design. For example, across offering tiers and models, the percentage of hearing aid compatible (“HAC”) models has increased.

For the purposes of informing the Commission as it considers its first biennial report to Congress on the implementation of the CVAA, we submit the following industry efforts:

- TIA’s TR-41 Engineering Committee (User Premises Telecommunications Requirements)⁸ develops voluntary standards for telecommunications TE and systems; specifically those used for voice services, integrated voice and data services, and Internet protocol (“IP”) applications. Together with its three subcommittees and their working groups, the committee develops performance and interface criteria for equipment, systems and private networks, as well as the information necessary to ensure their proper interworking with each other, with public networks, with IP telephony infrastructures and with carrier-provided private-line services. In addition, TR-41 develops criteria for preventing harm to the telephone network, which becomes mandatory when adopted by the Administrative Council for Terminal Attachments (“ACTA”), of which TIA is a founding organization.⁹ TIA has completed its work on a single Conversational Gain standard for analog and digital telephones that can be referenced in Part 68, and is working to create an addendum to the associated Telecommunications Systems Bulletin

⁸ TIA publishes an annual report that includes the latest actions taken by each respective TIA engineering committee, including TR-41, toward the development of standards for the advancement of global communications. See TIA, 2011-2012 Standards & Technology Annual Report (rel. Apr. 2012) at 9-10, available at http://www.tiaonline.org/standards/about/documents/STAR_2011-2012.pdf.

⁹ The ACTA was formed in 2001 through the co-sponsorship and support of the Alliance for Telecommunications Industry Solutions (“ATIS”) and TIA by Commission mandate with the mission to (1) adopt technical criteria for terminal equipment to prevent network harms through the act of publishing such criteria developed by the ANSI-accredited Standards Development Organizations (“SDOs”); and (2) establish and maintain database(s) of equipment approved as compliant with the technical criteria. See 2000 Biennial Regulatory Review of Part 68 of the Commission’s Rules and Regulations, *Report and Order*, CC Docket No. 99-216, FCC 00-400. See also <http://www.part68.org/aboutMain.aspx> (last visited Jul. 5, 2012).

for showing compliance with the Part 68 rules to include test procedures. The latest versions are moving to a new and improved method of measuring amplification, called Conversational Gain, a more rational and intuitive way to measure telephone speech amplification than currently-referenced Receive Objective Loudness Rating (“ROLR”) requirements, particularly for hard-of-hearing consumers who require an accurate reading on loudness before purchasing terminal equipment. While we believe the concept of Conversational Gain can be applied to a wide range of audio products for the transmission and/or reproduction of speech, the current standards and this proposal are intended to govern wireline telephone equipment only. We also note that the disability community was consulted in the development of Conversational Gain standards.

- ASC C63.19 has released the LTE update to its HAC standard for wireless devices.¹⁰ Recently, the Commission adopted and published this standard.¹¹ TIA, a member of ASC C63.19, agrees that this change to the Commission’s rules is in the public interest.¹² TIA also worked with the FCC Labs and ASC C63.19 to insure that the testing protocols for the 2011 additions to ANSI C63.19:2011 were defined.
- The Global Accessibility Reporting Initiative (“GARI”) has been created, fostered by the Mobile Manufacturers Forum (“MMF”) for wireless mobile devices.¹³ GARI maintains a list of features that address accessibility, and could be used as a supplement or model for

¹⁰ Cite to ASC C63.19 Standard.

¹¹ See In the Matter of Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets, Report and Order (rel. Apr. 9, 2012); see also 77 Fed. Reg. 41919 (Jul. 17, 2012).

¹² See Comments of TIA, WT Docket No. 07–250 (Jan. 13, 2012); see also Reply Comments of TIA, WT Docket No. 07–250 (Jan. 30, 2012).

¹³ See <http://www.mobileaccessibility.info/> (last accessed Aug. 10, 2011).

the Commission's own resource for consumers. Numerous TIA members are also members of the MMF. The FCC already incorporates GARI on its website at the Accessibility Clearinghouse.¹⁴

- To help develop a short-term solution for the delivery of text from wireless phones to the public safety answering point ("PSAP"), TIA was a member of and continues to support the adoption of the technical recommendations agreed to by the AISP.7-Interim Non-voice Emergency Services ("INES") Incubator. As detailed in its recommendations, the INES undertook a comprehensive analysis, which included consultation with representatives from all stakeholders, as well as consideration of a detailed list of criteria detailed in the INES recommendations. Based on this analysis, which included concluding that SMS is not a realistic option for a short-term solution, the INES recommended that internet protocol ("IP") Relay is recognized as a viable short-term solution.¹⁵ While the Commission has chosen to encourage Short Messaging Service ("SMS")-to-PSAP as the short-term solution, we believe that this comprehensive industry effort informed the FCC and all stakeholders of the capabilities of the current system's ability to provide text-to-PSAP and in this way has helped the FCC's EAAC to move forward more swiftly in developing the details of its recommendations.

¹⁴ See <http://apps.fcc.gov/accessibilityclearinghouse/products.html?pgID=2&disabilityId=0> (last visited Jul. 25, 2012).

¹⁵ ATIS Interim Non-Voice Emergency Services (INES) Report and Recommendations (Rel. Dec. 12, 2011), available at <http://www.atis.org/docstore/product.aspx?id=26035>.

B. Determining the Effect of Accessibility Recordkeeping, Complaint, and Enforcement Requirements is Difficult at this Time

In the PN, the Commission requests input on “the effect of the accessibility recordkeeping requirements on the development and deployment of new communications technologies.”¹⁶ TIA members have been complying with the recordkeeping requirements and will submit certifications under the CVAA of this as part of the transition starting April 1, 2013. Also, as noted above, a number of efforts have begun across the industry and within companies individually to comply with recordkeeping and enforcement requirements. However, as the Commission notes, enforcement procedures have not yet taken effect.¹⁷ We agree with the Commission that this first biennial report will not be able to evaluate compliance with the CVAA as fully effective.¹⁸

The precise amount of documentation that will suffice for compliance is not clearly known because the recordkeeping and enforcement process is just beginning. In light of this, we reiterate that excessive documentation requirements could defeat the goal of encouraging the development of accessible products and services.¹⁹ With respect to the need to maintain records that describe features of devices that address accessibility, the GARI’s list of features for wireless phones that address accessibility could be used as a supplement or model for the Commission’s own resource for consumers. When the Commission undertakes its first enforcement action, we urge a flexible approach where anticipatory documentation requirements

¹⁶ PN at ¶ 10.

¹⁷ PN at ¶ 11.

¹⁸ PN at ¶ 6.

¹⁹ *See, e.g., Ex parte* letter to Marlene Dortch, Secretary, FCC, from Danielle Coffey, TIA, CC Docket Nos. 10-213 and 10-145; WT Docket No. 96-198; MB Docket No. 11-43 (Aug. 18, 2012).

do not burden or derail the product design process, which includes consultation on disabled access issues. Further, we urge that the FCC look holistically at the efforts of each industry stakeholder when taking specific enforcement action.

C. Reducing Existing Barriers to Accessibility

Finally, in the PN, the Commission requests “an evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.”²⁰ TIA has long supported the passing of the CVAA and congratulates the Commission on its efforts to effectively implement the landmark legislation. While compliance with new CVAA-requirements has begun relatively recently, this question is difficult to answer granularly, and must be evaluated by what is achievable with current technology.

TIA does believe that the Commission can, by ensuring that it uses a flexible approach moving forward, reduce a major barrier to accessibility – regulatory uncertainty – and in this way increase the availability of ACS products and services to disabled populations. In the view of TIA, regulatory uncertainty is inversely correlated to investment and innovation. Because no enforcement action has yet been taken, an established level of recordkeeping cannot easily be determined. As TIA has noted in previous comments on the CVAA,²¹ the FCC should afford manufacturers maximum flexibility in meeting the requirements of the CVAA consistent with Congressional intent.²²

²⁰ PN at ¶ 12.

²¹ *See, e.g.*, Comments of TIA, CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (filed Apr.25, 2011) at 10.

²² *See, e.g.*, See H.R. Rep. No. 111-563 at 26 (2010).

In the immediate future, several class waivers are pending Commission action. These waivers cover certain gaming equipment,²³ IP televisions and IP digital video players,²⁴ and set-top boxes.²⁵ TIA's membership includes companies involved in manufacturing and supplying products and services in each of these classes, and has filed supportive comments to each.²⁶ The Commission's determination in these matters will be very significant to the ICT industry, and will serve as a primary indicator for how the new CVAA regulatory regime will be functioning. TIA strongly agrees with the argument that the strict application of Section 716 would harm the public interest without meaningfully increasing access to ACS for persons with disabilities.²⁷ Regulation in such a fashion would discourage investment and innovation, ultimately hampering the proliferation of ACS features in them.²⁸ We again urge the Commission to use the waiver evaluations at issue to set a standard of regulatory flexibility that will boost innovation in ACS

²³ See Entertainment Software Association, Petition for Waiver, CG Docket No. 10-213 (March 21, 2012); See also Request for Comment Petition for Class Waiver of Commission's Rules for Access to Advanced Communications Services and Equipment by People with Disabilities, Public Notice, DA 12-760 (May 15, 2012).

²⁴ See Consumer Electronics Association Petition for Waiver, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198 (Mar. 22, 2012); See also Request for Comment Petition for Class Waiver of Commission's Rules for Access to Advanced Communications Services and Equipment by People with Disabilities, Public Notice, DA 12-759 (May 15, 2012).

²⁵ See National Cable & Telecommunications Association Petition for Waiver, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198 (Jun. 1, 2012); See also Request for Comment Petition for Class Waiver of Commission's Rules for Access to Advanced Communications Services and Equipment by People with Disabilities, Public Notice, DA 12-984 (Jun. 21, 2012).

²⁶ See Reply Comments of TIA (to CEA Waiver Request), CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (Jun. 25, 2012); see also Reply Comments of TIA (to ESA Waiver Request), CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (Jun. 25, 2012); see also Comments of TIA, CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (Jul. 23, 2012).

²⁷ See, e.g., TIA Class Waiver Comments at 3-4.

²⁸ See, e.g., See Comments of Panasonic Corporation of North America, CG Docket No. 10-213 (Jun. 14, 2012) at 9.

and will provide confidence in the new regulations under the CVAA, consistent with Congressional intent.²⁹

Furthermore, the Commission can also increase the level of certainty by setting the rules required by the CVAA in a rapid manner, while allowing for an adequate phase-in period. For example, by seeking comment on and setting the rules for mobile browsers expeditiously,³⁰ the many companies seeking to plan designs for new products can use the guidance issued by the Commission to start making necessary changes in new product development cycles. In TIA's view, this clear and swift setting of requirements would serve as a reduction of uncertainty, resulting in increased investment and innovation.

²⁹ See H.R. Rep. No. 111-563 at 26 (2010).

³⁰ See 47 U.S.C. § 619.

III. CONCLUSION

For the foregoing reasons, TIA urges the Commission to act consistent with the recommendations above.

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