

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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)	
Communciations and Video Accessibility)	
Act of 2010)	
)	
Amendments to the Commission’s Rules)	WT Docket No. 96-198
Implementing Sections 255 and 251(a)(2))	
of the Communications Act of 1934, as)	
Enacted by the Telecommunications Act of)	
1996)	
)	
In the Matter of Accessible Mobile Phone)	CG Docket No. 10-145
Options for People who are Blind, Deaf-)	
Blind, or Have Low Vision)	
)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”)¹ hereby submits comments in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking (“FNPRM”),² which seeks comment on a number of issues regarding proposed rules

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.

² *Implementation of Section 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communciations 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, In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision, Notice of Proposed Rulemaking, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, FCC 11-37 (rel. Mar. 3, 2011) (“FNPRM”).*

towards implementation of Section 104 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “CVAA” or the “Act”).³ 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.

I. INTRODUCTION AND SUMMARY

TIA, a leading trade association for the ICT industry and long-time supporter of the Commission’s efforts to bring about access to ACS services for all Americans, is supportive of the Commission’s interpretation that Congress added Section 718 as an exception to the general coverage of Internet browsers as software subject to the requirements of Section 716 for Internet browsers built in or installed on mobile phones used by individuals who are blind or have a visual impairment because of the unique challenges associated with achieving mobile access for this particular community, as well as the best way(s) to implement Section 718.

Noting that Section 718 should be construed with the same degree of flexibility as is Section 716, TIA further agrees that the use of Application Programming Interfaces (APIs) hold potential to help bring about the incorporation of assistive technologies into mobile platforms across brands, but that browsers should not be obligated to use an “accessibility API” to comply with Section 718, as an API is one of a number of ways that a third-party screen reader. Because additional development and coordination is needed on each mobile platform, TIA urges the Commission to encourage industry forums and working groups to develop accessibility standards

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

for mobile browsers, and for these same groups to be allowed to petition the Commission to accept the use of API standards as voluntary safe harbors.

In determining how to define “interoperable video conferencing services,” TIA believes that the Commission should proceed carefully so as not to disrupt ongoing and planned technological developments in such a nascent market. Noting its disapproval of two alternative proposed definitions in the FNPRM, TIA reiterates its support for a single definition – Option 1 (“inter-platform, inter-network and inter-provider”) – framed from a consumer perspective: that a video conferencing service should be deemed “interoperable” under this definition when it allows a user to make and receive a video conference call to and from all other users, regardless of the network, device, or provider used to initiate or receive a video communication. TIA believes that such a definition would provide much-needed clarity for all stakeholders, and would be consistent with previous Commission actions.

Furthermore, TIA notes its objection to the consideration of the IT and Telecom RERC’s “Aspirational Goals and Testable Functional Performance Criteria.” As the Commission notes in the FNPRM, it has already adopted rules regarding impairing or impeding the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks. Moreover, the criteria are intensely specific and encroach into product design specifications, including areas that have no demonstrated record of successful implementation or adoption, such as real-time-text (RTT). The use of these criteria would discourage enhanced innovation in technology areas critical to the success of the CVAA.

Finally, TIA reiterates that it supports the use of standards as safe harbors where necessary. The Commission is applauded for discussing this topic, and for raising specific standards for input in this FNPRM. TIA provides input on these standards in its comment below,

and notes for the Commission its belief that while standards should be adopted as safe harbors, they should not be mandatory or classified as “accessibility” standards.

II. IT IS CRITICAL THAT THE COMMISSION IMPOSE OBLIGATIONS UNDER SECTION 718 CONSISTENT WITH SECTION 716’S REQUIREMENTS.

In the FNPRM, the Commission seeks comment on a proposed clarification that Congress added Section 718 as an exception to the general coverage of Internet browsers as software subject to the requirements of Section 716 for Internet browsers built in or installed on mobile phones used by individuals who are blind or have a visual impairment because of the unique challenges associated with achieving mobile access for this particular community, as well as the best way(s) to implement Section 718.⁴ TIA agrees with the Commission’s interpretation.

The Commission additionally inquires as to how it can ensure that the mobile phone industry will be prepared to implement accessibility features when Section 718 becomes effective on October 8, 2013.⁵ TIA believes that Section 718 should be construed with the same degree of flexibility that is used for Section 716. As TIA previously explained, Section 718, by its terms, falls under the same “achievable” and industry flexibility standard as products and services that are subject to Section 716. As such, the requirements of Section 718 should be

⁴ FNPRM at ¶ 296.

⁵ FNPRM at ¶ 300.

understood and applied in the same manner as Section 716: on a case-by-case basis and subject to the various factors and parameters discussed previously in reference to Section 716.⁶

TIA agrees with the Commission that APIs are possibly beneficial means that would bring about the integration of assistive technologies into mobile platforms across mobile phone brands, which would make these web browsers and other mobile phone functions accessible to those who are blind or visually impaired.⁷ However, browsers should not be compelled to use an “accessibility API” to comply with Section 718, as an API is one of multiple ways to use a third-party screen reader. TIA agrees that there is a need for additional APIs to be created for new and some existing mobile platforms before third party screen readers can be incorporated into mobile phones in this manner.⁸ The Commission acknowledges in the FNPRM that “[a]dditional lead time must be built-in as [API] technical development and coordination is needed on each mobile platform.”⁹ TIA suggests that the Commission, as contemplated in the FNPRM in regard to Section 716,¹⁰ encourage industry forums and working groups to develop accessibility standards for mobile browsers. These forums and working groups should be allowed to petition the Commission to accept the use of an API standard as a voluntary safe harbor standard.

TIA also reiterates that, consistent with third party liability requirements, manufacturers are accountable for access to content only, and not for the accessibility of content or services that

⁶ TIA NPRM Comments at 34.

⁷ *FNPRM* at ¶ 297.

⁸ *Id.*

⁹ *FNPRM* at ¶ 294.

¹⁰ *FNPRM* at ¶¶ 311-314.

are made available to the user by the inclusion of a browser on a manufacturer's product.¹¹ For this reason, TIA believes that, to the extent that a manufacturer arranged for the inclusion of a browser at the time the product was produced, it should only be liable for the accessibility of that browser.

III. IN DEFINING "INTEROPERABLE VIDEO CONFERENCING," THE COMMISSION SHOULD ADOPT A CLEAR AND PREDICTABLE DEFINITION THAT INCORPORATES A CONSUMER VIEWPOINT.

In the FNPRM, the Commission discusses several proposed definitions for the term "interoperable" in the context of video conferencing services.¹² As TIA has recently noted to the Commission, by mandating accessibility for interoperable video conferencing, Congress looked to the future time when interoperable video conferencing would become available.¹³ The video conferencing sector of the ICT market is only emerging and the Commission should take care that new regulations put in place do not hinder the potential growth – and the benefits to those the CVAA is intended to most benefit – that would result.

As an initial matter, TIA notes its opposition to the use of multiple definitions for the term "interoperable."¹⁴ The CVAA's intended results will be best realized through the use of clear and concise regulations, not multiple definitions for the same term. Multiple definitions and

¹¹ See TIA NPRM Comments at 35.

¹² FNPRM at ¶¶ 301-305.

¹³ See, e.g., TIA *Ex Parte*, CC Docket Nos. 10-213 and 10-145; WT Docket No. 96-198 (filed Aug. 10, 2011) ("TIA *Ex Parte*").

¹⁴ FNPRM at ¶ 304.

tests for whether a video conferencing service is “interoperable” would be unnecessarily burdensome on those seeking to comply with the CVAA as well as on Commission resources. Further, use of a single definition of “interoperable” in the matter at hand would be consistent with the Commission’s policy of using a single definition in a public safety context.¹⁵

As TIA noted to the Commission as recently as late 2011, interactive video conferencing in which participants freely converse among themselves with audio and video, from both ends of the call, is currently a reality. The missing aspect, however, is interoperability across networks and platforms so that such conversations may occur without special effort on the part of consumers. TIA and other industry members have communicated that while standard development efforts are currently underway, the video conferencing market is not in a state, at this time, to offer such capabilities.¹⁶ Furthermore, the existence of a video conferencing interoperability standard does not necessarily mean that it is in use. Lack of adoption can be caused by a number of issues, which range from numerous technical issues to the proprietary nature of the standard.

Based on this reasoning and its understanding of the standards universe, TIA strongly opposes the use of “Option 2” – the proposal that “interoperable” means having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards.¹⁷ TIA believes that it would be unfair to video conferencing service and product

¹⁵ See 47 C.F.R. § 90.7.

¹⁶ See TIA *Ex Parte*.

¹⁷ *FNPRM* at ¶¶ 302-303.

developers to mandate a particular standard – one that could, under the proposed “Option 2” language the Commission presents, easily be technology-specific,¹⁸ be proprietary in nature, and/or be developed by a group which membership is not possible for some (such as fora or consortia, as opposed to an American National Standards Institute-accredited process like TIA’s which allows any stakeholder to participate, and provides fairness mechanisms such as voting and appeals). In addition, even for those able to partake in the development of the standard, such a definition would create a “race” to develop the first standard, removing the market competition aspect from the standard development system that has enabled the information and communications technology (ICT) standards system to thrive, and taking away from the technical analyses and evaluations that are so crucial to that standards development process. As a result, short-sighted, lacking standards would be mandated at the expense of innovation and investment.

In addition, TIA also cannot support the “Option 3” definition – that “interoperable” means able to connect users among different video conferencing services, including Video Relay Service (“VRS”).¹⁹ While TIA believes that that the definition of an “interoperable video conferencing service” may include more mature products such as VRS equipment, which is already subject to an express interoperability mandate,²⁰ the definition as written in the FNPRM would be so vague and sweeping as to draw in *all* video conferencing services and platforms, including those just beginning to develop which should not be considered “interoperable,”

¹⁸ Section 716(e)(1)(D) of the CVAA prohibits the Commission from mandating a technical standard on ACS providers.

¹⁹ *FNPRM* at ¶ 303.

²⁰ *See* TIA NPRM Comments at 11.

disincentivizing investment and innovation to the detriment of all consumers. TIA strongly urges the Commission to consider the drastic effects that such a definition would have on those developing new video conferencing services. In addition, as TIA has noted previously, such an overly-broad definition would run counter to Congress' intent that the CVAA require accessibility when interoperable video conferencing becomes available.²¹

In its discussions with the Commission on this issue, TIA has suggested that based on FCC precedent, the Institute of Electrical and Electronics Engineers' (IEEE) definition of "interoperable," which defines "interoperability" as the "ability of a system or a product to work with other products without special effort on the part of the consumer," is consistent with how the Commission should determine the meaning of this term.²² TIA reiterates its support for what the Commission provides as "Option 1" in the FNPRM,²³ and notes that it agrees with the Consumer Electronics Association (CEA) that this definition provides an end user/consumer point of view.²⁴ This is a crucial aspect to the Commission's definition of "interoperable" in this context for those service providers and manufacturers who must comply with the CVAA, the Commission will be ensuring that consumers fully realize the CVAA, and for the consumers who will need to determine whether to file a related complaint with the Commission.

Recognizing the high importance of a consumer viewpoint in the Commission's understanding of "interoperable video conferencing services," TIA is in agreement that a video

²¹ See TIA Ex Parte.

²² See CEA Ex Parte, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed Jul. 18, 2011) at 3.

²³ See, e.g., TIA NPRM Comments at 11.

²⁴ See TIA Ex Parte at 1-2.

conferencing service should be deemed “interoperable” under this definition when it allows a user to make and receive a video conference call to and from all other users, regardless of the network, device, or provider used to initiate or receive a video communication. This policy would allow for ease in determining whether a video conferencing service falls within the CVAA for all stakeholders, would provide a clear and simple path forward for future development of video conferencing services and platforms, and would encourage the consideration of accessibility in the earliest stages of development. It would further be consistent with analogous definitional determinations made by the Commission, such as the decision on how to define “interconnected” with respect to VoIP services.²⁵ TIA believes that such a definition should not affect the ability of parties to petition the Commission to accept the use of a standard as a voluntary safe harbor for compliance with the CVAA.

In regard to “Option 1,” the Commission inquires whether the extent to which video conferencing services or equipment must be different or distinct to qualify under this definition.²⁶ From the viewpoint of TIA, should the Commission choose to adopt the consumer-viewpoint definition of “interoperable” as described above, the degree to which interoperability would have to exist to cross this threshold should be complete. TIA bases this position on Congress’ wording in the CVAA, where the plain language of the law contains no qualifying

²⁵ See 47 CFR § 9.3 (defining an interconnected Voice over Internet Protocol (VoIP) service 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 (CPE)*; and (4) permits *users* generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network) (emphasis added). TIA believes this definition to also be from a “user-centric” perspective.

²⁶ FNPRM at ¶ 304.

terms (such as “partially” or “substantially”).²⁷ Clarifying that “interoperability” for video conferencing includes the understanding that the service must be *fully* interoperable would therefore be consistent with the law as written, and would, in addition, aid all stakeholders as it would provide the crucial regulatory certainty needed for such a nascent sector.

IV. TIA OPPOSES THE IT AND TELECOM RERC’S PROPOSED “ASPIRATIONAL GOALS AND TESTABLE FUNCTIONAL PERFORMANCE CRITERIA.”

In the FNPRM, the Commission seeks comment on the IT and Telecom RERCs’ suggestion on how the Commission should interpret the phrase “may not impair or impede the accessibility of information content” in Section 617(e)(1)(B).²⁸ These performance criteria are viewed by TIA as unnecessary, premature, and prescriptive.

It is unclear to TIA why, despite adopting the rule 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 in the accompanying Report & Order, the adoption of further accessibility of information content guidelines are needed at this time. It is unclear why these testing and performance criteria are included in the same item that has already adopted performance criteria which have not yet gone into effect. The “Aspirational Goal and Testable Functional Performance Criteria” would far exceed the burdens that ACS

²⁷ The CVAA defines “Interoperable Video Conferencing Service” as “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.” 47 U.S.C. 153(59).

²⁸ FNPRM at ¶ 310.

manufacturers and service providers already face, and were appropriately not adopted in the R&O.

Performance criteria proposed by the IT and Telecom RERC's are so specific that they threaten to become product design specifications. For example, the IT and Telecom RERC's suggest criteria for the inclusion of RTT.²⁹ TIA believes for the Commission to consider such criteria at this time is inappropriate, as RTT does not have a demonstrated record of successful implementation or adoption, and the technology is in its infancy. Prescriptive criteria as detailed in Appendix G would have very damaging effects on the development of a technology that is only in its experimental phase. TIA is aware of no justification for mandating the inclusion of technologies in ACS which have not yet been developed and for which market demand is unknown.

TIA implores the Commission that the use of such criteria will inhibit, not encourage, innovation in the ACS market, and strongly opposes the adoption of further performance criteria exceeding that which has already been adopted.

²⁹ *FNPRM* at Appendix G.

V. **TIA SUPPORTS THE USE OF INDUSTRY-DEVELOPED TECHNICAL STANDARDS AS SAFE HARBORS FOR COMPLIANCE WITH THE CVAA.**

TIA reiterates its support for standards to be used as safe harbors where necessary, and not as a substitute for more general performance objectives,³⁰ and encourages the use of voluntary, consensus-based and open industry standards to be used as safe harbors to guarantee compliance. TIA applauds the Commission for discussing various standards for safe harbor consideration in the FNPRM, and for encouraging industry to propose additional standards. TIA further supports the proposal in the FNPRM that ACS manufacturers be allowed to self-certify compliance,³¹ as well as that the Commission should, for purposes of determining compliance with a safe harbor, apply only safe harbors that were recognized industry standards at the time of the design phase for the equipment or service in question.

The Commission raises the question of whether it should consider several specific standards, including “APIs and specifications which support the applicable provisions in ISO/IEC 13066-1:2011;” as well as W3C/WAI Web Content Accessibility Guidelines, Version 2.0 (WCAG); and Section 508 of the Rehabilitation Act of 1973, as amended.³² As TIA noted in its initial comment in this matter, ISO 13066 is certainly an API that could improve the accessibility of mobile internet browsers, but each platform requires the development of its own platform-specific API, so additional APIs will need to be created for new and some existing mobile platforms before third party screen readers can be incorporated into mobile phones in this

³⁰ See, e.g., TIA Comments at 32.

³¹ FNPRM at ¶ 313.

³² FNPRM at ¶ 312.

manner.³³ In the case of WCAG, WCAG 2.0 is intended for websites and web applications, and not platforms, software, and other electronic content, so TIA is unsure how in its current form it could be used as a safe harbor for manufacturers and service providers without substantial adjustment.

Finally, as TIA has previously proposed to the Commission, in regard to Section 508, the United States Access Board is currently in the Advanced Notice of Proposed Rulemaking (ANPRM) process addressing reform of the section.³⁴ TIA notes that the Commission does not have to ensure that the performance objectives proposed by the Commission mirror the draft Section 508 guidelines set forth by the Access Board, which has no role in CVAA implementation. Unlike the Access Board's draft guidelines, which require "access to all functionality," the Commission should clarify that all performance objectives apply only to those features and functions necessary to "operate" the ACS functions and do not extend to functions like turning on electrical power, changing consumables, configuration, set-up or maintenance.³⁵ The Commission may attempt, if not contrary to statutory obligations, to harmonize its CVAA performance objectives with those of the Access Board, but the Commission has full discretion to depart from the Access Board Guidelines when merited.³⁶

³³ See TIA Comments at 34-35.

³⁴ See United States Architectural and Transportation Barriers Compliance Board Request for Comments on Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards, 76 Fed. Reg. 76640 (Dec. 8, 2011).

³⁵ See TIA Comments at 31.

³⁶ See *Implementation of 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 Inquiry, 16 FCC Rcd 6417, ¶ 15 (1999).

TIA also reiterates its belief that while standards should be adopted as safe harbors, such standards should not be mandated or classified as an “accessibility” standard.³⁷ Such a designation would be received as an inaccurate endorsement by the Commission, as it would imply that the particular standard provides for wholesale “accessibility.”

³⁷ See TIA Comments at 32.

VI. CONCLUSION

For the foregoing reasons, TIA urges the Commission's to adopt the recommendations above, consistent with the CVAA.

Respectfully submitted,

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