

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Advanced Communications Provisions of the) CG Docket No. 10-213
Twenty-First Century Communications and)
Video Accessibility Act of 2010)

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”)¹ hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“Accessibility FNPRM”) issued in the above-referenced proceeding.² In this proceeding, the Commission seeks comment on issues presented in the *Notice of Proposed Rulemaking* (“Accessibility NPRM”) where the record was insufficient. These issues include: (1) whether Congress added §718 as an exception to the general coverage of Internet browsers as software subject to §716; (2) what the meaning of interoperability is and whether it should apply to all video conferencing services; (3) whether the Commission should exercise ancillary jurisdiction to require that video mail service be accessible when provided along with a video conferencing service; (4) whether performance objectives should be adopted; and (5) whether technical standards should be used as a safe harbor for §716 compliance.

¹ The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP-enabled communications. VON Coalition members include AT&T, Broadvox, BT, Cloud Communications Alliance, Google, iBasis, Microsoft, Nextiva, Skype, Vonage and Yahoo!.

² *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*, CG Docket No. 10-213, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (“Accessibility FNPRM”).

I. THE COMMISSION SHOULD APPLY THE ACT IN A MANNER THAT FOSTERS INNOVATION WHILE ACHIEVING ITS ACCESSIBILITY GOALS

VON supports the important goals of the Twenty-First Century Communications Act (the “Act”) and looks forward to working with the Commission to achieve accessibility to advanced communications services (“ACS”) by persons with disabilities. Accessibility requirements should be specifically tailored to manufacturers and providers offering products and services whose primary purpose is ACS. VON encourages the Commission to implement provisions that will promote innovation and allow for flexibility in complying with accessibility requirements.

A. Developers of Browsers in Smart Phones are Neither Providers Nor Manufacturers of Mobile Devices and Should Therefore Not Be Subject to Section 718 Accessibility Requirements.

Section 718 does not confer authority upon the FCC to regulate developers of browsers in smart phones but rather specifically vests responsibility for ensuring browser accessibility with the “manufacturer of a telephone used with public mobile service” or the “provider of mobile service.”³ The language in Section 718 applies *exclusively* to manufacturers of telephones used for mobile service and providers of mobile service. Because accessibility obligations for mobile browsers rest on manufacturers and providers, developers of browsers should not be subject to Section 718 accessibility requirements.

Developers of smart phone browsers are neither manufacturers nor providers of mobile equipment or service. The manufacturers subject to Section 718 requirements must be manufacturers of “a *telephone* used with public mobile service.”⁴ Because developers create mobile applications and do not manufacture phones, they do not fall within the category of manufacturers required to comply with Section 718. Mobile service, for purposes of Section

³ *Accessibility FNPRM*, Appendix C, Subpart E.

⁴ *Id.* (Emphasis added)

718, is defined as “air-to-ground radiotelephone services, cellular radio telecommunications services, offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communication services.”⁵ Developers of browsers do not provide any of those services and are, therefore, not mobile service providers required to comply with Section 718.

This interpretation is consistent with the Commission’s narrow interpretation of Section 716(a)(1). Under Section 716(a)(1), providers of independent software are neither “service providers” nor “equipment manufacturers” and are, therefore, not subject to ACS accessibility requirements.⁶ Although Section 718 is specific to mobile browsers, the language of applicability is similarly constructed. To interpret “manufacturer of telephone” or “provider of mobile service” to include developer of mobile browsers would be inconsistent with the Commission’s interpretation of Section 716(a)(1).

VON reiterates that Section 718 only applies to mobile browsers that the manufacturer or provider “directs or specifies to be included” within the covered device and does not apply to Internet content, applications, or services otherwise separately accessible to or separately usable by individuals with disabilities.⁷ Because the manufacturer or the service provider must affirmatively select a browser for Section 718 requirements to apply, it follows that the burden to comply with Section 718 requirements necessarily rests with the manufacturer or provider. A

⁵ *Accessibility FNPRM*, citing Section 710(b)(4)(B) of the Communications Act, 47 U.S.C. § 610.

⁶ *Accessibility FNPRM*, ¶ 58. “[T]he better interpretation of Section 716(a)(1) is that it does not impose independent regulatory obligations on providers of software that the end user acquires separately from equipment used for advanced communications services.” *See also* ¶ 62 “The word “device” refers to a physical object and cannot reasonably be construed to also refer to separately-acquired software. If, as in the broader interpretation of Section 716(a)(1), “manufacturer of equipment” includes manufacturers of separately acquired software, then Congress created a rule of construction for Section 716 as a whole that applies to only some of the equipment that is subject to Section 716(a). The narrower interpretation of Section 716(a)(1) produces a more logical result, in that Section 716(j), as it applies to manufacturers of equipment, has the same scope as Section 716(a).

⁷ *Accessibility FNPRM*, ¶ 292 citing 47 U.S.C. § 619(a) and House Report at 27; *see also Id.* at ¶7 citing 47 U.S.C. § 619(a)(1)-(2).

determination that the developer of a browser is subject to Section 718 requirements would be an overly broad and inconsistent interpretation of statutory language.

B. The Commission Should Define Interoperable To Mean “Able to Engage Across a Wide Range of Platforms, Networks, and Providers”

The term “interoperable,” as it applies to video conferencing services should be defined as “able to engage across a wide range of platforms, network, and providers.” This definition appropriately clarifies that (1) the capability to interoperate must precede regulation and (2) interoperability does not apply to communications between users of the same system.

VON agrees with the Commission’s clarification that the inclusion of the word “interoperable” with respect to video conferencing services does not mean that interoperability is *required*.⁸ The Commission nonetheless states that because “interoperable” is expressly written into the statute, it must be defined. The CVAA defines interoperable video conferencing services as “real-time video communications, including audio, to enable users to share information of the user’s choosing.”⁹ Earlier versions of the legislation use the same definition but do not use the word “interoperable.”¹⁰ The *Accessibility NPRM* therefore asked commenters to define the term “interoperable” in a manner consistent with the statutory language.¹¹

The Commission highlights three alternative definitions of “interoperable” in the *Accessibility FNPRM* and seeks comment on each.¹² The proposed definitions include: (1) “interoperable” means able to function inter-platform, inter-network, and inter-provider; (2) “interoperable” means having published or otherwise agreed-upon standards that allow for

⁸ *Accessibility FNPRM*, ¶ 48

⁹ 47 U.S.C. §§ 153(1) and (27).

¹⁰ *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*, CG Docket No. 10-213, Notice of Proposed Rulemaking, 26 FCC Rcd at 3147, ¶ 35, citing S. 3304 and H.R. 3101 (“Accessibility NPRM”).

¹¹ *Accessibility NPRM*, ¶ 4

¹² *Accessibility FNPRM*, ¶ 303

manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or (3) “interoperable” means able to connect users among different video conferencing services, including VRS.¹³ VON agrees that “interoperable” should mean that video conferencing services are able to function between platforms, networks and providers.¹⁴

By using this definition, the scope of interoperability will be appropriately narrowed to communication involving video conferencing services.¹⁵ This definition will prevent an extension of the term’s scope to include text-only or audio-only services. The Commission must clarify that interoperable video conferencing services only applies to real-time video communications to avoid industry uncertainty. Adopting this definition will also resolve issues of applicability. Because the definition “able to engage in video conferencing across a wide range of platforms, networks, and providers” assumes technological capability to interoperate, it will be clear to the industry that accessibility requirements only attach if and when interoperability is achieved. This will ensure certainty among manufacturers and providers and reduce the need for waiver applications and complaints. Adopting the definition “able to engage in video conferencing across a wide range of platforms, networks, and providers” will also clarify that video conferencing capability among users of the same system does not mean the service is “interoperable.”

¹³ *Id.*

¹⁴ While similar to the first Commission suggestion, VON is concerned that use of the word “inter” fails to define the kind of interoperation or the degree of interoperation necessary for the accessibility requirements to apply.

¹⁵ The Commission should bear in mind that consumer video conferencing services, like Skype, Messenger and others, are necessarily different than enterprise services and do not have the same capabilities and so achieving an expansive definition of interoperable would not be possible in the near future.

C. The Commission Should Not Use Its Ancillary Jurisdiction to Subject Video Mail to ACS Accessibility Requirements

VON agrees with the Commission that video mail is not a service that enables real-time voice communication and therefore does not meet the definition of interoperable video conferencing services.¹⁶ Because video mail does not fall within the definition of interoperable video conferencing services, it should not be subject to ACS accessibility requirements. The *Accessibility FNPRM* asks whether asserting ancillary jurisdiction should be exercised to achieve accessibility of video mail.¹⁷ VON asserts that because video mail is an incidental feature of video conferencing services, the Commission should not exercise its ancillary jurisdiction to require accessibility.

The Commission has previously extended accessibility requirements to voice mail and interactive menu services because “failure to ensure accessibility of [these functions] would [have] seriously undermine the accessibility and usability of telecommunications services.”¹⁸ Unlike voice mail and interactive menu services, which are regular functions of telephony and are necessary to have full access to telephone service, video mail is merely a supplemental function to real-time video communications.¹⁹ Exercising ancillary jurisdiction to cover video mail is not necessary to achieve full accessibility and usability of video conferencing services.

¹⁶ *Accessibility FNPRM*, ¶307. “We agree with commenters that non-real-time or near-real-time features or functions of a video conferencing service, such as video mail, do not meet the definition of “real-time” video communications.”

¹⁷ *Accessibility FNPRM*, ¶ 306 n. 784 citing *Accessibility NPRM*, 26 FCC Rcd at 3164, ¶ 42, citing *Section 255 Report and Order*, 16 FCC Rcd at 6455-6462, ¶¶ 93-108.

¹⁸ *Accessibility FNPRM*, ¶ 306 n. 784. Specifically, the Commission employed its ancillary jurisdiction to extend the scope of Section 255 to both voice mail and interactive menu services under Part 7 of the Commission’s rules because “the failure to ensure accessibility of voicemail and interactive menu services, and the related equipment that performs these functions, would [have] seriously undermined the accessibility and usability of telecommunications services required by sections 255 and 251(a)(2).”

¹⁹ *Accessibility NPRM*, 26 FCC Rcd at 3164, ¶ 307 n. 785. CEA Comments at 15-16; CTIA Comments at 21; NCTA Reply Comments at 6-7; Verizon Comments at 9. As a technical matter, “video mail” may not be “real-time” communication, but, as a practical matter, if an interoperable video conferencing service and equipment is accessible, the video mail feature or function will likely also be accessible.

D. The Commission Should Not Yet Establish Performance Objectives

The Commission should refrain from articulating performance objectives until the Architectural and Transportation Barriers Compliance Board (the “Access Board”) issues its forthcoming guidelines that will be released under Section 508 of the Rehabilitation Act.²⁰ The Access Board has deep experience with accessibility and assistive technology matters, and consistency between the Section 508 guidelines and the Section 716 performance objectives is necessary because there is significant overlap between the equipment and services that will be subject to the Section 716 requirements and those that are subject to the Section 508 criteria for government procurement. Thus, to avoid disparate standards, the Commission should defer any decision on performance objectives until the Access Board’s proceeding is complete.

E. Technical Standards As Safe Harbors Are Needed To Accommodate Industry Participation In the Standards Process and To Avoid Potential Enforcement.

VON supports the development of technical standards that can be used as safe harbors so that all parties understand what is expected of them and to reduce uncertainty. Properly developed safe harbors can be an important way for companies to provide input into the standards process and avoid potential enforcement. Standards are particularly important for IP communications, as interoperability between different technologies is often required.²¹ To the extent that technical standards facilitate interoperability and allow for industry participation in

²⁰ *Accessibility FNPRM*, ¶ 217 citing *Accessibility NPRM*, 26 FCC Rcd at 3175, ¶ 115 (the Commission asks whether any of the Access Board’s Draft Guidelines on Section 508 should be adopted as prospective guidelines).

²¹ For example, peer-to-peer VoIP over the Internet depends on the following (at both ends of the communication):

- that the microphone works with the sound card
- that the sound card works with the rest of the PC hardware
- that the PC hardware works with the operating system
- that the operating system works with the VoIP softphone
- that the operating system works with the networking hardware
- that the networking hardware and software work with the access network
- that the access network works with the ISP
- that the ISP works with the Internet backbone

See <http://www.inclusive.com/trng/voip>

determining standards, VON supports their use as safe harbors. The Commission should continue to implement provisions that encourage the most paths to compliance in order to meet the needs of the disabled community. Flexibility, and not enforcement, should be the ultimate goal of the Act.

CONCLUSION

The VON Coalition looks forward to working with the Commission in this important proceeding on the development of policies that will increase accessibility to new technologies without hindering, innovation, development or investment.

Respectfully submitted,

VOICE ON THE NET COALITION

/s/

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February 13, 2012