

TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO  
ACCESSIBILITY ACT OF 2010

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JULY 26, 2010.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. WAXMAN, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

[To accompany H.R. 3101]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3101) to ensure that individuals with disabilities have access to emerging Internet Protocol-based communication and video programming technologies in the 21st century, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Twenty-First Century Communications and Video Accessibility Act of 2010”.

(b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.  
 Sec. 2. Limitation on liability.  
 Sec. 3. Proprietary technology.

**TITLE I—COMMUNICATIONS ACCESS**

- Sec. 101. Definitions.  
 Sec. 102. Hearing aid compatibility.  
 Sec. 103. Relay services.  
 Sec. 104. Access to internet-based services and equipment.  
 Sec. 105. Emergency Access Advisory Committee.  
 Sec. 106. Relay services for deaf-blind individuals.

**TITLE II—VIDEO PROGRAMMING**

- Sec. 201. Video Programming and Emergency Access Advisory Committee.  
 Sec. 202. Video description and closed captioning.  
 Sec. 203. Closed captioning decoder and video description capability.  
 Sec. 204. User interfaces on digital apparatus.  
 Sec. 205. Access to video programming guides and menus provided on navigation devices.  
 Sec. 206. Definitions.

**SEC. 2. LIMITATION ON LIABILITY.**

(a) **IN GENERAL.**—Except as provided in subsection (b), no person shall be liable for a violation of the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services to the extent such person—

- (1) transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or
- (2) provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

(b) **EXCEPTION.**—The limitation on liability under subsection (a) shall not apply to any person to the extent such person relies on third party applications, services, software, hardware, or equipment to comply with the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act).

**SEC. 3. PROPRIETARY TECHNOLOGY.**

No action taken by the Commission to implement the requirements of this Act or the amendments made by this Act shall mandate the use or incorporation of proprietary technology.

**TITLE I—COMMUNICATIONS ACCESS****SEC. 101. DEFINITIONS.**

Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) by adding at the end the following new paragraphs:

“(53) **ADVANCED COMMUNICATIONS SERVICES.**—The term ‘advanced communications services’ means—

- “(A) interconnected VoIP service;
- “(B) non-interconnected VoIP service;
- “(C) electronic messaging service; and
- “(D) video conferencing service.

“(54) **CONSUMER GENERATED MEDIA.**—The term ‘consumer generated media’ means content created and made available by consumers to web sites, including video, audio, and multimedia content.

“(55) **DISABILITY.**—The term ‘disability’ has the meaning given such term under section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

“(56) **ELECTRONIC MESSAGING SERVICE.**—The term ‘electronic messaging service’ means a service that provides non-voice messages in text form between individuals over communications networks.

“(57) INTERCONNECTED VOIP SERVICE.—The term ‘interconnected VoIP service’ has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

“(58) NON-INTERCONNECTED VOIP SERVICE.—The term ‘non-interconnected VoIP service’—

“(A) means a service that—

“(i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and

“(ii) requires Internet protocol compatible customer premises equipment; and

“(B) does not include any service that is an interconnected VoIP service.

“(59) VIDEO CONFERENCING SERVICE.—The term ‘video conferencing service’ means a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.”; and

(2) by reordering paragraphs (1) through (52) and the paragraphs added by paragraph (1) of this section in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

#### SEC. 102. HEARING AID COMPATIBILITY.

(a) COMPATIBILITY REQUIREMENTS.—

(1) TELEPHONE SERVICE FOR THE DISABLED.—Section 710(b)(1) of the Communications Act of 1934 (47 U.S.C. 610(b)(1)) is amended to read as follows:

“(b)(1) Except as provided in paragraphs (2) and (3) and subsection (c), the Commission shall require that customer premises equipment described in this paragraph provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility. Customer premises equipment described in this paragraph are the following:

“(A) All essential telephones.

“(B) All telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date.

“(C) All customer premises equipment used with advanced communications services that is designed to provide 2-way voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone, subject to the regulations prescribed by the Commission under subsection (e).”

(2) ADDITIONAL AMENDMENTS.—Section 710(b) of the Communications Act of 1934 (47 U.S.C. 610(b)) is further amended—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i)—

(aa) by striking “initial”;

(bb) by striking “of this subsection after the date of enactment of the Hearing Aid Compatibility Act of 1988”; and

(cc) by striking “paragraph (1)(B) of this subsection” and inserting “subparagraphs (B) and (C) of paragraph (1)”;

(II) by inserting “and” at the end of clause (ii);

(III) by striking clause (iii); and

(IV) by redesignating clause (iv) as clause (iii);

(ii) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(iii) in subparagraph (B) (as so redesignated)—

(I) by striking the first sentence and inserting “The Commission shall periodically assess the appropriateness of continuing in effect the exemptions for telephones and other customer premises equipment described in subparagraph (A) of this paragraph.”; and

(II) in each of clauses (iii) and (iv), by striking “paragraph (1)(B)” and inserting “subparagraph (B) or (C) of paragraph (1)”;

(B) in paragraph (4)(B)—

(i) by striking “public mobile” and inserting “telephones used with public mobile”;

(ii) by inserting “telephones and other customer premises equipment used in whole or in part with” after “means”;

(iii) by striking “and” after “public land mobile telephone service,” and inserting “or”;

(iv) by striking “part 22 of”; and

(v) by inserting after “Regulations” the following: “, or any functionally equivalent unlicensed wireless services”; and

(C) in paragraph (4)(C)—

(i) by striking “term ‘private radio services’” and inserting “term ‘telephones used with private radio services’”; and

(ii) by inserting “telephones and other customer premises equipment used in whole or in part with” after “means”.

(b) TECHNICAL STANDARDS.—Section 710(c) of the Communications Act of 1934 (47 U.S.C. 610(c)) is amended by adding at the end the following: “A telephone or other customer premises equipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for purposes of this section, until such time as the Commission may determine otherwise. The Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards. The Commission may delegate this authority to an employee pursuant to section 5(c). The Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.”.

(c) RULEMAKING.—Section 710(e) of the Communications Act of 1934 (47 U.S.C. 610(e)) is amended—

(1) by striking “impairments” and inserting “loss”; and

(2) by adding at the end the following sentence: “In implementing the provisions of subsection (b)(1)(C), the Commission shall use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.”.

(d) RULE OF CONSTRUCTION.—Section 710(h) of the Communications Act of 1934 (47 U.S.C. 610(h)) is amended to read as follows:

“(h) RULE OF CONSTRUCTION.—Nothing in the Twenty-First Century Communications and Video Accessibility Act of 2010 shall be construed to modify the Commission’s regulations set forth in section 20.19 of title 47 of the Code of Federal Regulations, as in effect on the date of enactment of such Act.”.

#### SEC. 103. RELAY SERVICES.

(a) DEFINITION.—Paragraph (3) of section 225(a) of the Communications Act of 1934 (47 U.S.C. 225(a)(3)) is amended to read as follows:

“(3) TELECOMMUNICATIONS RELAY SERVICES.—The term ‘telecommunications relay services’ means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.”.

(b) INTERNET PROTOCOL-BASED RELAY SERVICES.—Title VII of such Act (47 U.S.C. 601 et seq.) is amended by adding at the end the following new section:

#### “SEC. 715. INTERNET PROTOCOL-BASED RELAY SERVICES.

“Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on the date of enactment of such Act, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.”.

(c) TELECOMMUNICATIONS RELAY SERVICES POLICY ADVISORY COUNCIL.—Section 225 of the Communications Act of 1934 (47 U.S.C. 225) is amended by adding at the end the following new subsection:

“(h) TELECOMMUNICATIONS RELAY SERVICES POLICY ADVISORY COUNCIL.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Chairman of the Commission shall establish an advisory committee to be known as the Telecommunications Relay Services Policy Advisory Council (in this section referred to as the ‘Policy Advisory Council’) and shall require the Policy Advisory Council—

“(A) to conduct their meetings in a manner that is open to the public;

“(B) to make a complete and comprehensive record of such proceedings publicly available;

“(C) to establish safeguards to identify and mitigate conflicts of interest with respect to members of the Policy Advisory Council; and

“(D) to advise the Commission in the development or proposal of any major changes or new rules relating to telecommunications relay services;

“(2) MEMBERSHIP.—As soon as practicable after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Chairman of the Commission shall appoint the members of the Policy Advisory Council, ensuring a balance between potential consumers and other stakeholders. Members of the Policy Advisory Council shall be selected from each of the following groups:

“(A) Individuals who are consumers of telecommunications relay services.

“(B) Representatives of State commissions with jurisdiction over intrastate telecommunications relay services.

“(C) Representatives of providers of telecommunications relay services.

“(3) COLLECTION AND DISSEMINATION OF INFORMATION AND ADVICE.—The Commission—

“(A) shall seek the advice of the Policy Advisory Council in assisting the Commission in developing or proposing any major changes or issuing any new rules relating to telecommunications relay services; and

“(B) shall, with the advice of the Policy Advisory Council, make all regulations, rules, and orders relating to telecommunications relay services fully and easily accessible to consumers of such services.”

(d) FOLLOWUP PROCEEDING.—Section 225 of the Communications Act of 1934 (47 U.S.C. 225), as amended by subsection (c), is further amended by adding after subsection (h) the following new subsection:

“(i) FOLLOWUP PROCEEDING.—

“(1) IN GENERAL.—Not later than 30 months after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission, in consultation with all relevant Federal agencies, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report—

“(A) concerning how the Commission is ensuring that telecommunications relay service customers have access to improved technologies, interoperability, and functionalities; and

“(B) identifying impediments to the broad and efficient use of telecommunications relay services in the workplace.

“(2) SUGGESTIONS FOR WORKPLACE ADOPTION.—The Commission shall develop suggestions to facilitate broader and more efficient use of telecommunications relay services in the workplace, including suggestions for facilitating the replacement of outdated end-user telecommunications relay services equipment in public places and government offices.”

**SEC. 104. ACCESS TO INTERNET-BASED SERVICES AND EQUIPMENT.**

(a) TITLE VII AMENDMENT.—Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.), as amended by section 103, is further amended by adding at the end the following new sections:

**“SEC. 716. ACCESS TO INTERNET-BASED EQUIPMENT AND SERVICES.**

“(a) ACCESS TO EQUIPMENT.—

“(1) RIGHT TO ACCESSIBLE EQUIPMENT.—With respect to equipment manufactured after the effective date of the regulations established pursuant to this section, and subject to those regulations, a manufacturer of equipment used for advanced communications, including end user equipment, network equipment, and software, shall ensure that such equipment that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless doing so is not achievable.

“(2) INDUSTRY FLEXIBILITY.—A manufacturer of equipment may satisfy the requirements of paragraph (1) with respect to such equipment by—

“(A) ensuring that the equipment that such manufacturer offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

“(B) if such manufacturer chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

“(b) ACCESS TO SERVICES.—

“(1) RIGHT TO ACCESSIBLE SERVICES.—With respect to advanced communications services offered after the effective date of the regulations established pursuant to this section, and subject to those regulations, a provider of services used for advanced communications shall ensure that such services that such

provider offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless doing so is not achievable.

“(2) INDUSTRY FLEXIBILITY.—A provider of services may satisfy the requirements of paragraph (1) with respect to such services by—

“(A) ensuring that the services that such provider offers are accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

“(B) if such provider chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

“(c) COMPATIBILITY.—Whenever the requirements of subsection (a) are not achievable for a manufacturer, or the requirements of subsection (b) are not achievable for a provider, a manufacturer or provider shall ensure that its equipment or service is compatible with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless the requirement of this subsection is not achievable.

“(d) NETWORK FEATURES, FUNCTIONS, AND CAPABILITIES.—Each provider of advanced communications services has the duty not to install network features, functions, or capabilities that impede accessibility or usability of advanced communications services.

“(e) REGULATIONS.—

“(1) IN GENERAL.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall—

“(A) include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities;

“(B) provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through advanced communications services, equipment used for advanced communications services, or networks used to provide advanced communications services; and

“(C) determine the obligations under this section of manufacturers, service providers, and providers of applications.

“(2) PROSPECTIVE GUIDELINES.—The Commission shall issue prospective guidelines for a manufacturer or provider regarding the requirements of this section.

“(f) SERVICES AND EQUIPMENT SUBJECT TO SECTION 255.—The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010. Such services and equipment shall remain subject to the requirements of section 255.

“(g) ACHIEVABLE DEFINED.—For purposes of this section and section 717, the term ‘achievable’ means with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:

“(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question.

“(2) The impact on the operations of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.

“(3) The financial resources of the manufacturer or provider.

“(4) The type of operations of the manufacturer or provider.

“(5) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

“(h) COMMISSION FLEXIBILITY.—

“(1) WAIVER.—The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider, to waive the requirements of this section for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, that—

“(A) is capable of accessing an advanced communications service; and  
 “(B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

“(2) SMALL ENTITY EXEMPTION.—The Commission may exempt small entities from the requirements of this section.

“(i) CUSTOMIZED EQUIPMENT OR SERVICES.—The provisions of this section shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

“(j) RULE OF CONSTRUCTION.—This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.

**“SEC. 717. ENFORCEMENT AND RECORDKEEPING OBLIGATIONS.**

“(a) COMPLAINT AND ENFORCEMENT PROCEDURES.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255 or 716, establish procedures for enforcement actions by the Commission with respect to such violations, and implement the recordkeeping obligations of paragraph (5) for manufacturers and providers subject to such sections. Such regulations shall include the following provisions:

“(1) NO FEE.—The Commission shall not charge any fee to an individual who files a complaint alleging a violation of section 255 or 716.

“(2) RECEIPT OF COMPLAINTS.—The Commission shall establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints filed under section 255 or 716.

“(3) COMPLAINTS TO THE COMMISSION.—

“(A) IN GENERAL.—Any person alleging a violation of section 255 or 716 by a manufacturer of equipment or provider of service subject to such sections may file a formal or informal complaint with the Commission.

“(B) INVESTIGATION OF INFORMAL COMPLAINT.—The Commission shall investigate the allegations in an informal complaint and, within 180 days after the date on which such complaint was filed with the Commission, issue an order concluding the investigation, unless such complaint is resolved before such time. The order shall include a determination whether any violation occurred.

“(i) VIOLATION.—If the Commission determines that a violation has occurred, the Commission may, in the order issued under this subparagraph or in a subsequent order, require the manufacturer or service provider to take such action as is necessary to comply with the requirements of this section.

“(ii) NO VIOLATION.—If a determination is made that a violation has not occurred, the Commission shall provide the basis for such determination.

“(C) CONSOLIDATION OF COMPLAINTS.—The Commission may consolidate for investigation and resolution complaints alleging substantially the same violation.

“(4) OPPORTUNITY TO RESPOND.—Before the Commission makes a determination pursuant to paragraph (3), the party that is the subject of the complaint shall have a reasonable opportunity to respond to such complaint, and may include in such response any factors that are relevant to such determination.

“(5) RECORDKEEPING.—

“(A) IN GENERAL.—Beginning one year after the effective date of regulations promulgated pursuant to section 716(e), each manufacturer and provider subject to sections 255 and 716 shall maintain, in the ordinary course of business and for a reasonable period, records of any efforts taken by such manufacturer or provider to implement sections 255 and 716, including the following:

“(i) Information about the manufacturer’s or provider’s efforts to consult with individuals with disabilities.

“(ii) Descriptions of the accessibility features of its products and services.

“(iii) Information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

“(B) SUBMISSION OF ANNUAL CERTIFICATION.—An officer of a manufacturer or provider shall submit to the Commission an annual certification that records are being kept in accordance with subparagraph (A).

“(C) COMMISSION REQUEST FOR RECORDS.—After the filing of a formal or informal complaint against a manufacturer or provider in the manner prescribed in paragraph (3), the Commission may request, and shall keep confidential, a copy of the records maintained by such manufacturer or provider pursuant to subparagraph (A) of this paragraph that are directly relevant to the equipment or service that is the subject of such complaint.

“(6) FAILURE TO ACT.—If the Commission fails to carry out any of its responsibilities to act upon a complaint in the manner prescribed in paragraph (3), the person that filed such complaint may bring an action in the nature of mandamus in the United States Court of Appeals for the District of Columbia to compel the Commission to carry out any such responsibility.

“(7) COMMISSION JURISDICTION.—The limitations of section 255(f) shall apply to any claim that alleges a violation of section 255 or 716. Nothing in this paragraph affects or limits any action for mandamus under paragraph (6) or any appeal pursuant to section 402(b)(10).

“(8) PRIVATE RESOLUTIONS OF COMPLAINTS.—Nothing in the Commission’s rules or this Act shall be construed to preclude a person who files a complaint and a manufacturer or provider from resolving a formal or informal complaint prior to the Commission’s final determination in a complaint proceeding. In the event of such a resolution, the parties shall jointly request dismissal of the complaint and the Commission shall grant such request.

“(b) REPORTS TO CONGRESS.—

“(1) IN GENERAL.—Every two years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes the following:

“(A) An assessment of the level of compliance with sections 255 and 716.

“(B) An evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.

“(C) The number and nature of complaints received pursuant to subsection (a) during the two years that are the subject of the report.

“(D) A description of the actions taken to resolve such complaints under this section, including forfeiture penalties assessed.

“(E) The length of time that was taken by the Commission to resolve each such complaint.

“(F) The number, status, nature, and outcome of any actions for mandamus filed pursuant to subsection (a)(6) and the number, status, nature, and outcome of any appeals filed pursuant to section 402(b)(10).

“(G) An assessment of the effect of the requirements of this section on the development and deployment of new communications technologies.

“(2) PUBLIC COMMENT REQUIRED.—The Commission shall seek public comment on its tentative findings prior to submission to the Committees of the report under this subsection.

“(c) COMPTROLLER GENERAL ENFORCEMENT STUDY.—

“(1) IN GENERAL.—The Comptroller General shall conduct a study to consider and evaluate the following:

“(A) The Commission’s compliance with the requirements of this section, including the Commission’s level of compliance with the deadlines established under and pursuant to this section and deadlines for acting on complaints pursuant to subsection (a).

“(B) Whether the enforcement actions taken by the Commission pursuant to this section have been appropriate and effective in ensuring compliance with this section.

“(C) Whether the enforcement provisions under this section are adequate to ensure compliance with this section.

“(D) An assessment of the effect of the requirements of this section on the development and deployment of new communications technologies.

“(2) REPORT.—Not later than 5 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Comptroller General shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study required by paragraph (1), with recommendations for how the enforcement process and measures under this section may be modified or improved.



“(d) CLEARINGHOUSE.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, in consultation with the Architectural and Transportation Barriers Compliance Board, the National Telecommunications and Information Administration, trade associations, and organizations representing individuals with disabilities, establish a clearinghouse of information on the availability of accessible products and services and accessibility solutions required under sections 255 and 716. Such information shall be made publicly available on the Commission’s website and by other means, and shall include an annually updated list of products and services with access features.

“(e) OUTREACH AND EDUCATION.—Upon establishment of the clearinghouse of information required under subsection (d), the Commission, in coordination with the National Telecommunications and Information Administration, shall conduct an informational and educational program designed to inform the public about the availability of the clearinghouse and the protections and remedies available under sections 255 and 716.

**“SEC. 718. INTERNET BROWSERS BUILT INTO TELEPHONES USED WITH PUBLIC MOBILE SERVICES.**

“(a) ACCESSIBILITY.—If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B)) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subsection shall not impose any requirement on such manufacturer or provider—

“(1) to make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

“(2) to make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications or services).

“(b) INDUSTRY FLEXIBILITY.—A manufacturer or provider may satisfy the requirements of subsection (a) with respect to such telephone or services by—

“(1) ensuring that the telephone or services that such manufacture or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

“(2) using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.”.

(b) EFFECTIVE DATE FOR SECTION 718.—Section 718 of the Communications Act of 1934, as added by subsection (a), shall take effect 3 years after the date of enactment of this Act.

(c) TITLE V AMENDMENTS.—Section 503(b)(2) of such Act (47 U.S.C. 503(b)(2)) is amended by adding after subparagraph (E) the following:

“(F) Subject to paragraph (5) of this section, if the violator is a manufacturer or service provider subject to the requirements of section 255 or 716, and is determined by the Commission to have violated any such requirement, the manufacturer or provider shall be liable to the United States for a forfeiture penalty of not more than \$100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.”.

(d) REVIEW OF COMMISSION DETERMINATIONS.—Section 402(b) of such Act (47 U.S.C. 402(b)) is amended by adding the following new paragraph:

“(10) By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under section 717(a)(3).”.

**SEC. 105. EMERGENCY ACCESS ADVISORY COMMITTEE.**

(a) ESTABLISHMENT.—For the purpose of achieving equal access to emergency services by individuals with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network, not later than 60 days after the date of enactment of this Act, the Chairman of the Commission shall establish an advisory committee, to be known as the Emergency Access Advisory Committee (referred to in this section as the “Advisory Committee”).

(b) MEMBERSHIP.—As soon as practicable after the date of enactment of this Act, the Chairman of the Commission shall appoint the members of the Advisory Committee, ensuring a balance between individuals with disabilities and other stake-

holders, and shall designate two such members as the co-chairs of the Committee. Members of the Advisory Committee shall be selected from the following groups:

(1) STATE AND LOCAL GOVERNMENT AND EMERGENCY RESPONDER REPRESENTATIVES.—Representatives of State and local governments and representatives of emergency response providers, selected from among individuals nominated by national organizations representing such governments and representatives.

(2) SUBJECT MATTER EXPERTS.—Individuals who have the technical knowledge and expertise to serve on the Advisory Committee in the fulfillment of its duties, including representatives of—

(A) providers of interconnected and non-interconnected VoIP services;

(B) vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of interconnected and non-interconnected VoIP services;

(C) national organizations representing individuals with disabilities and senior citizens;

(D) Federal agencies or departments responsible for the implementation of the Next Generation E 9–1–1 system;

(E) the National Institute of Standards and Technology; and

(F) other individuals with such technical knowledge and expertise.

(3) REPRESENTATIVES OF OTHER STAKEHOLDERS AND INTERESTED PARTIES.—Representatives of such other stakeholders and interested and affected parties as the Chairman of the Commission determines appropriate.

(c) DEVELOPMENT OF RECOMMENDATIONS.—Within one year after the completion of the member appointment process by the Chairman of the Commission pursuant to subsection (b), the Advisory Committee shall develop and submit to the Commission recommendations to implement such technologies and methods, including recommendations—

(1) with respect to what actions are necessary as a part of the migration to a national Internet protocol-enabled network to achieve reliable, interoperable communication transmitted over such network that will ensure access to emergency services by individuals with disabilities;

(2) for protocols, technical capabilities, and technical requirements to ensure reliability and interoperability necessary to ensure access to emergency services by individuals with disabilities;

(3) for the establishment of technical standards for use by public safety answering points, designated default answering points, and local emergency authorities;

(4) for relevant technical standards and requirements for communication devices and equipment and technologies to enable the use of reliable emergency access;

(5) for procedures to be followed by IP-enabled network providers to ensure that such providers do not install features, functions, or capabilities that would conflict with technical standards;

(6) for deadlines by which providers of interconnected and non-interconnected VoIP services and manufacturers of equipment used for such services shall achieve the actions required in paragraphs (1) through (5), and for the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficient technologies and methods to enable access to emergency services by individuals with disabilities; and

(7) for the establishment of rules to update the Commission's rules with respect to 9–1–1 services and E–911 services, as such term is defined in section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942), for users of telecommunications relay services as new technologies and methods for providing such relay services are adopted by providers of such relay services.

(d) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Advisory Committee shall take place not later than 45 days after the completion of the member appointment process by the Chairman of the Commission pursuant to subsection (b).

(2) OTHER MEETINGS.—After the initial meeting, the Advisory Committee shall meet at the call of the chairs, but no less than monthly until the recommendations required pursuant to subsection (c) are completed and submitted.

(3) NOTICE; OPEN MEETINGS.—Any meetings held by the Advisory Committee shall be duly noticed at least 14 days in advance and shall be open to the public.

(e) PROCEDURAL RULES.—

(1) QUORUM.—One-third of the members of the Advisory Committee shall constitute a quorum for conducting business of the Advisory Committee.

(2) **SUBCOMMITTEES.**—To assist the Advisory Committee in carrying out its functions, the chair may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts as determined to be necessary.

(3) **ADDITIONAL PROCEDURAL RULES.**—The Advisory Committee may adopt other procedural rules as needed.

(f) **FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

(g) **IMPLEMENTING RECOMMENDATIONS.**—The Commission shall have the authority to promulgate regulations to implement the recommendations proposed by the Advisory Committee, as well as any other regulations as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network.

(h) **SURVEY.**—Not later than 30 months after the date of enactment of this Act, the Commission shall conduct and publish the results of a national survey of individuals with disabilities concerning real time text, geolocation services, instant messaging services, and mobile telecommunications relay services. The survey shall seek to determine what individuals with disabilities believe to be the most effective and efficient technologies and methods by which to enable access to emergency services by individuals with disabilities.

(i) **DEFINITIONS.**—In this section—

(1) the term “Commission” means the Federal Communications Commission;

(2) the term “Chairman” means the Chairman of the Federal Communications Commission; and

(3) except as otherwise expressly provided, other terms have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

**SEC. 106. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.**

Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.), as amended by sections 103 and 104, is further amended by adding at the end the following:

**“SEC. 719. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.**

“(a) **IN GENERAL.**—Within 6 months after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall establish rules that define as eligible for relay service support those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind.

“(b) **INDIVIDUALS WHO ARE DEAF-BLIND DEFINED.**—For purposes of this section, the term ‘individuals who are deaf-blind’ has the meaning given such term in section 206 of the Helen Keller National Center Act (29 U.S.C. 1905).

“(c) **ANNUAL AMOUNT.**—The total amount of support the Commission may provide from its Telecommunications Relay Services Fund for any fiscal year may not exceed \$10,000,000.”

## **TITLE II—VIDEO PROGRAMMING**

**SEC. 201. VIDEO PROGRAMMING AND EMERGENCY ACCESS ADVISORY COMMITTEE.**

(a) **ESTABLISHMENT.**—Not later than 60 days after the date of enactment of this Act, the Chairman shall establish an advisory committee to be known as the Video Programming and Emergency Access Advisory Committee.

(b) **MEMBERSHIP.**—As soon as practicable after the date of enactment of this Act, the Chairman shall appoint individuals who have the technical knowledge and engineering expertise to serve on the Advisory Committee in the fulfillment of its duties, including the following:

(1) Representatives of distributors and providers of video programming or national organizations representing such distributors and providers.

(2) Representatives of vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of video programming delivered using Internet protocol or a national organization representing such vendors, developers, or manufacturers.

(3) Representatives of manufacturers of consumer electronics or information technology equipment or a national organization representing such manufacturers.

- (4) Representatives of national organizations representing accessibility advocates, including individuals with disabilities and the elderly.
- (5) Representatives of the broadcast television industry or a national organization representing such industry.
- (6) Other individuals with technical and engineering expertise, as the Chairman determines appropriate.
- (c) COMMISSION OVERSIGHT.—The Chairman shall appoint a member of the Commission's staff to moderate and direct the work of the Advisory Committee.
- (d) TECHNICAL STAFF.—The Commission shall appoint a member of the Commission's technical staff to provide technical assistance to the Advisory Committee.
- (e) DEVELOPMENT OF RECOMMENDATIONS.—
  - (1) CLOSED CAPTIONING REPORT.—Within 6 months after the date of the first meeting of the Advisory Committee, the Advisory Committee shall develop and submit to the Commission a report that includes the following:
    - (A) An identification of the performance objectives for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render closed captions of video programming delivered using Internet protocol.
    - (B) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of this Act for the delivery of closed captions of video programming delivered using Internet protocol that are necessary to meet the performance objectives identified under subparagraph (A).
    - (C) A recommendation for any regulations that may be necessary to ensure compatibility between video programming delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to closed captions.
  - (2) VIDEO DESCRIPTION, EMERGENCY INFORMATION, USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS.—Within 18 months after the date of enactment of this Act, the Advisory Committee shall develop and submit to the Commission a report that includes the following:
    - (A) An identification of the performance objectives for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render video descriptions of video programming and emergency information delivered using Internet protocol or digital broadcast television.
    - (B) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of this Act for the delivery of video descriptions of video programming and emergency information delivered using Internet protocol that are necessary to meet the performance objectives identified under subparagraph (A).
    - (C) A recommendation for any regulations that may be necessary to ensure compatibility between video programming delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to emergency information.
    - (D) With respect to user interfaces, a recommendation for the standards, protocols, and procedures used to enable the functions of apparatus designed to receive or display video programming transmitted simultaneously with sound (including apparatus designed to receive or display video programming transmitted by means of services using Internet protocol) to be accessible to and usable by individuals with disabilities.
    - (E) With respect to user interfaces, a recommendation for the standards, protocols, and procedures used to enable on-screen text menus and other visual indicators used to access the functions on an apparatus described in subparagraph (D) to be accompanied by audio output so that such menus or indicators are accessible to and usable by individuals with disabilities.
    - (F) A recommendation for the standards, protocols, and procedures used to enable the selection of video programming information on an apparatus or navigation device by means of a guide or menu to be accessible in real-time by individuals who are blind or have a visual impairment.
  - (3) CONSIDERATION OF STANDARDS, PROTOCOLS, AND PROCEDURES BY STANDARD-SETTING ORGANIZATIONS.—The recommendations of the Advisory Committee shall, to the extent possible, incorporate the standards, protocols, and procedures that have been adopted by appropriate industry standard-setting organizations for the report requirements described in paragraphs (1) and (2).
- (f) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Advisory Committee shall take place not later than 180 days after the date of the enactment of this Act.

(2) OTHER MEETINGS.—After the initial meeting, the Advisory Committee shall meet at the call of the Chairman.

(3) NOTICE; OPEN MEETINGS.—Any meeting held by the Advisory Committee shall be noticed at least 14 days before such meeting and shall be open to the public.

(g) PROCEDURAL RULES.—

(1) QUORUM.—The presence of one-third of the members of the Advisory Committee shall constitute a quorum for conducting the business of the Advisory Committee.

(2) SUBCOMMITTEES.—To assist the Advisory Committee in carrying out its functions, the Chairman may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts.

(3) ADDITIONAL PROCEDURAL RULES.—The Advisory Committee may adopt other procedural rules as needed.

(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

(i) ADOPTION OF STANDARDS, PROTOCOLS, PROCEDURES, AND OTHER TECHNICAL REQUIREMENTS.—Not later than 12 months after the date on which the Advisory Committee transmits its report under subsection (e)(2) to the Commission, the Commission shall take all actions necessary to adopt relevant technical standards, protocols, procedures, and other technical requirements to ensure compatibility between video programming delivered using Internet protocol or digital broadcast television and devices capable of receiving and displaying such programming in order to facilitate access to emergency information.

**SEC. 202. VIDEO DESCRIPTION AND CLOSED CAPTIONING.**

(a) VIDEO DESCRIPTION.—Section 713 of the Communications Act of 1934 (47 U.S.C. 613) is amended—

(1) by striking subsections (f) and (g);

(2) by redesignating subsection (h) as subsection (j); and

(3) by inserting after subsection (e) the following:

“(f) VIDEO DESCRIPTION.—

“(1) REINSTATEMENT OF REGULATIONS.—On the day that is 1 year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, after a rulemaking, reinstate its video description regulations contained in the Implementation of Video Description of Video Programming Report and Order (15 F.C.C.R. 15,230 (2000)), modified as provided in paragraph (2).

“(2) MODIFICATIONS TO REINSTATED REGULATIONS.—Such regulations shall be modified only as follows:

“(A) The regulations shall apply to video programming, as defined in subsection (i), insofar as such programming is transmitted for display on television in digital format.

“(B) The Commission shall update the list of the top 25 Designated Market Areas, the list of the top 5 national nonbroadcast networks that have at least 50 hours per quarter of prime time programming that is not exempt under this paragraph, and the designation of the beginning calendar quarter for which compliance shall be calculated.

“(C) The regulations may permit a provider of video programming or a program owner to petition the Commission for an exemption from the requirements of this section upon a showing that the requirements contained in this section would be economically burdensome.

“(D) The Commission may exempt from the regulations established pursuant to paragraph (1) a service, class of services, program, class of programs, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment.

“(E) The regulations shall not apply to live or near-live programming.

“(F) The regulations shall provide for an appropriate phased schedule of deadlines for compliance.

“(3) INQUIRIES ON FURTHER VIDEO DESCRIPTION REQUIREMENTS.—The Commission shall commence the following inquiries not later than 1 year after the completion of the phase-in of the reinstated regulations and shall report to Congress 1 year thereafter on the findings for each of the following:

“(A) VIDEO DESCRIPTION IN TELEVISION PROGRAMMING.—The availability, use, and benefits of video description on video programming distributed on television, the technical and creative issues associated with providing such

video description, and the financial costs of providing such video description for providers of video programming and program owners.

“(B) VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON THE INTERNET.—The technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol.

“(4) CONTINUING COMMISSION AUTHORITY.—

“(A) IN GENERAL.—The Commission may issue additional regulations if the Commission determines, at least 2 years after completing the reports required in paragraph (3), that the need for and benefits of providing video descriptions for video programming, insofar as such programming is transmitted for display on television, are greater than the technical and economic costs of providing such additional programming. If the Commission makes such a determination and issues additional regulations, the Commission may increase, in total, the hours requirement for described video programming, insofar as such programming is transmitted for display on television, up to 75 percent of the requirement in the regulations reinstated under paragraph (1).

“(B) FURTHER REQUIREMENTS.—

“(i) REPORT.—Nine years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report assessing—

“(I) the types of described video programming that is available to consumers;

“(II) consumer use of such programming;

“(III) the costs to program owners, providers, and distributors of creating such programming;

“(IV) the benefits to consumers of such programming;

“(V) the amount of such programming currently available; and

“(VI) the need for additional described programming.

“(ii) INCREASED AVAILABILITY.—Ten years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall have the authority, based upon the findings, conclusions, and recommendations contained in the report under clause (i), to increase the availability of such programming.

“(C) APPLICATION TO DESIGNATED MARKET AREAS.—

“(i) IN GENERAL.—After the Commission completes the study on video description, the Commission shall phase in the video description regulations for all designated market areas, except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate.

“(ii) PHASE-IN DEADLINE.—The phase-in described under clause (i) shall be completed not later than 6 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010.

“(g) EMERGENCY INFORMATION.—Not later than 1 year after the Video Programming and Emergency Access Advisory Committee report under section 201(e)(2) of the Twenty-First Century Communications and Video Accessibility Act of 2010 is submitted to the Commission, the Commission shall complete a proceeding to—

“(1) identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or have a visual impairment; and

“(2) promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or have a visual impairment.

“(h) RESPONSIBILITIES.—

“(1) VIDEO PROGRAMMING OWNER.—A video programming owner shall ensure that any closed captioning and video description required pursuant to this section is provided in accordance with the technical standards, protocols, and procedures established by the Commission.

“(2) VIDEO PROGRAMMING PROVIDER OR DISTRIBUTOR.—A video programming provider or video programming distributor shall be deemed in compliance with this section and the rules and regulation promulgated thereunder if such provider or distributor enables the rendering or the pass through of closed captions and video description signals.

- “(i) DEFINITIONS.—For purposes of this section, section 303, and section 330:
- “(1) VIDEO DESCRIPTION.—The term ‘video description’ means the insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.
- “(2) VIDEO PROGRAMMING.—The term ‘video programming’ has the meaning given such term in section 602.”
- (b) CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—Section 713 of such Act is further amended by striking subsection (c) and inserting the following:
- “(c) DEADLINES FOR CAPTIONING.—
- “(1) IN GENERAL.—The regulations prescribed pursuant to subsection (b) shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming published or exhibited on television.
- “(2) DEADLINES FOR PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—
- “(A) REGULATIONS ON CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—Not later than 6 months after the submission of the report to the Commission required by section 201(e)(1) of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate regulations to require the provision of closed captioning on video programming delivered using Internet protocol.
- “(B) SCHEDULE.—The regulations prescribed under this paragraph shall include an appropriate schedule of decoding for the provision of closed captioning, taking into account whether such programming is prerecorded and edited for Internet distribution, or whether such programming is live or near-live and not edited for Internet distribution.
- “(C) COST.—The Commission may delay or waive the regulation promulgated under subparagraph (A) to the extent the Commission finds that the application of the regulation to live video programming delivered using Internet protocol would be economically burdensome to providers of video programming or program owners.
- “(D) REQUIREMENTS FOR REGULATIONS.—
- “(i) IN GENERAL.—The regulations prescribed under this paragraph—
- “(I) shall contain a definition of ‘near-live programming’ and ‘edited for Internet distribution’;
- “(II) may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome to the provider of such service, program, or equipment;
- “(III) shall provide that de minimis failure to comply with such regulations by a provider of video programming or program owner shall not be treated as a violation of the regulations; and
- “(IV) shall only apply to video programming that is transmitted for display on television with closed captioning after the effective date of the regulations issued pursuant to this section.
- “(ii) ALTERNATE MEANS.—An entity may meet the requirements of this section through alternate means than those prescribed by regulations pursuant to paragraph (1) if the requirements of this section are met, as determined by the Commission.”
- (c) CONFORMING AMENDMENT.—Section 713(d) of such Act is amended by striking paragraph (3) and inserting the following:
- “(3)(A) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section;
- “(B) the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome;
- “(C) during the pendency of such a petition, such provider or owner shall be exempt from the requirements of this section; and
- “(D) the Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome.”
- (d) REPORTING REQUIREMENT.—Two years after the effective date of the regulations issued pursuant to this section, and biennially thereafter, each broadcast television network and each cable television network shall submit to the Commission a report containing the number of hours, in the applicable 2-year period, of video programming not published or exhibited on television after the date of enactment of this Act that was provided on the Internet with closed captioning.
- (e) REPORT TO CONGRESS.—

(1) IN GENERAL.—Three years after the date of enactment of this Act, the Commission shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(A) assessing the technical, economic, and operational issues regarding the captioning of video programming that is distributed only over the Internet, including the types and amounts of such video programming that is or could be captioned, the types of entities producing such programming, and the effects a closed captioning requirement may have on the producers of such programming;

(B) assessing the benefits to and use by consumers of closed captioning of video programming that is distributed only over the Internet for consumers; and

(C) making recommendations, if any, of whether Congress should adopt or the Commission should implement a closed captioning requirement for such programming.

(2) UPDATES.—The Commission shall periodically update the report to the Committees as it determines appropriate.

**SEC. 203. CLOSED CAPTIONING DECODER AND VIDEO DESCRIPTION CAPABILITY.**

(a) AUTHORITY TO REGULATE.—Section 303(u) of the Communications Act of 1934 (47 U.S.C. 303(u)) is amended to read as follows:

“(u) Require that—

“(1) apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size—

“(A) be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming;

“(B) have the capability to decode and make available the transmission and delivery of video description services as required by regulations reinstated and modified pursuant to section 713(f); and

“(C) have the capability to decode and make available emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner that is accessible to individuals who are blind or have a visual impairment; and

“(2) notwithstanding paragraph (1) of this subsection—

“(A) apparatus described in such paragraph that use a picture screen that is less than 13 inches in size meet the requirements of subparagraphs (A), (B), and (C) of such paragraph only if the requirements of such subparagraphs are achievable (as defined in section 716);

“(B) any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements of such paragraph; and

“(C) the Commission shall have the authority to waive the requirements of this subsection for any apparatus or class of apparatus.”

(b) OTHER DEVICES.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding at the end the following new subsection:

“(z) Require that—

“(1) if achievable (as defined in section 716), apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States, enable the rendering or the pass through of closed captions, video description signals, and emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) so that viewers are able to activate and de-activate the closed captions and video description as the video programming is played back on a picture screen of any size; and

“(2) interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit the display of closed captions and to make encoded video description and emergency information audible.”

(c) SHIPMENT IN COMMERCE.—Section 330(b) of the Communications Act of 1934 (47 U.S.C. 330(b)) is amended—

(1) by striking “section 303(u)” in the first sentence and inserting “subsections (u) and (z) of section 303”;

(2) by striking the second sentence and inserting the following: “Such rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming, the



transmission and delivery of video description services, and the conveyance of emergency information as required by section 303 of this Act.”; and

(3) in the fourth sentence, by striking “closed-captioning service continues” and inserting “closed-captioning service and video description service continue”.

(d) IMPLEMENTING REGULATIONS.—

(1) IN GENERAL.—The Federal Communications Commission shall prescribe such regulations as are necessary to implement the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934, as amended by this section, including any technical standards, protocols, and procedures needed for the transmission of—

(A) closed captioning within 6 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(1); and

(B) video description and emergency information within 12 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2).

(2) ALTERNATE MEANS.—An entity may meet the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to paragraph (1) if the requirements of such sections are met, as determined by the Commission.

**SEC. 204. USER INTERFACES ON DIGITAL APPARATUS.**

(a) AMENDMENT.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding after subsection (z), as added by section 203 of this Act, the following new subsection:

“(aa) Require—

“(1) if achievable (as defined in section 716), that digital apparatus designed to receive or play back video programming, that are shipped in interstate commerce or manufactured in the United States, transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of all built-in apparatus functions are accessible to and usable by individuals with disabilities;

“(2) that if on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions of the apparatus described in paragraph (1), such functions shall be accompanied by audio output that is either integrated or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or have a visual impairment in real-time;

“(3) that built-in user controls on such apparatus shall be capable of accessing closed captioning, including—

“(A) if a remote control is provided with the apparatus—

“(i) a button, key, or icon on the remote control of such apparatus designated for activating closed captioning; or

“(ii) any other mechanism that provides a substantially equivalent level of accessibility; and

“(B) if on-screen menus are displayed on such apparatus—

“(i) the inclusion of ‘closed captions’ and ‘video description’ on the first menu that appears; or

“(ii) any other mechanism that provides a substantially equivalent level of accessibility; and

“(4) that in applying this subsection the term ‘apparatus’ does not include a navigation device, as such term is defined in section 76.1200 of title 47, Code of Federal Regulations.”.

(b) IMPLEMENTING REGULATIONS.—

(1) IN GENERAL.—Within 12 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), the Commission shall prescribe such regulations as are necessary to implement the amendments made by subsection (a).

(2) ALTERNATE MEANS.—An entity may meet the requirements of sections 303(aa) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to paragraph (1) if the requirements of such section are met, as determined by the Commission.

(c) DEFERRAL OF COMPLIANCE WITH ATSC MOBILE DTV STANDARD A/153.—A digital apparatus designed and manufactured to receive or play back the Advanced Television Systems Committee’s Mobile DTV Standards A/153 shall not be required to meet the requirements of the regulations prescribed under subsection (b) for a period of not less than 24 months after the date on which the final regulations are published in the Federal Register.

**SEC. 205. ACCESS TO VIDEO PROGRAMMING GUIDES AND MENUS PROVIDED ON NAVIGATION DEVICES.**

(a) AMENDMENT.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding after subsection (aa), as added by section 204 of this Act, the following new subsection:

“(bb) Require—

“(1) if achievable (as defined in section 716), that the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or have a visual impairment, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement; and

“(2) for navigation devices with built-in closed captioning capability, access to such capability through a button, key, or icon designated for activating the closed captioning, or through any other mechanism that provides a substantially equivalent level of accessibility.”

(b) IMPLEMENTING REGULATIONS.—

(1) IN GENERAL.—Within 12 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), the Commission shall prescribe such regulations as are necessary to implement the amendment made by subsection (a).

(2) EXEMPTION.—Such regulations may provide an exemption from the regulations for cable systems serving 50,000 or fewer subscribers.

(3) RESPONSIBILITY.—An entity shall only be responsible for compliance with the requirements added by this section with respect to navigation devices that such entity provides to a requesting individual who is blind or has a visual impairment and shall make reasonable efforts to make such requirements known to consumers.

(4) SEPARATE EQUIPMENT OR SOFTWARE.—

(A) IN GENERAL.—Such regulations shall permit but not require the entity providing the navigation device to the requesting individual who is blind or has a visual impairment to comply with section 303(bb)(1) of the Communications Act of 1934 (as added by subsection (a) of this section) through such entity’s use of software, a peripheral device, specialized consumer premises equipment, a network-based service, or other solution, and shall provide such entity with the flexibility to select the manner of compliance.

(B) REQUIREMENTS.—If an entity complies with section 303(bb)(1) of the Communications Act of 1934 (as added by subsection (a) of this section) under subparagraph (A) of this paragraph, such entity shall provide any such software, peripheral device, equipment, service, or solution at no additional charge and within a reasonable time to such individual.

(5) USER CONTROLS FOR CLOSED CAPTIONING.—Such regulations shall permit the entity providing the navigation device maximum flexibility in the selection of means for compliance with section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section).

(6) PHASE-IN.—

(A) IN GENERAL.—The Commission shall provide affected entities with—

(i) not less than 2 years after the adoption of such regulations to begin placing in service devices that comply with the requirements of section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section); and

(ii) not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements of section 303(bb)(1) of the Communications Act of 1934 (as added by subsection (a) of this section).

(B) APPLICATION.—Such regulations shall apply only to devices manufactured or imported on or after the respective effective dates established in subparagraph (A).

**SEC. 206. DEFINITIONS.**

In this title:

(1) ADVISORY COMMITTEE.—The term “Advisory Committee” means the advisory committee established in section 201.

(2) CHAIRMAN.—The term “Chairman” means the Chairman of the Federal Communications Commission.

(3) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(4) EMERGENCY INFORMATION.—The term “emergency information” has the meaning given such term in section 79.2 of title 47, Code of Federal Regulations.

(5) INTERNET PROTOCOL.—The term “Internet protocol” includes Transmission Control Protocol and a successor protocol or technology to Internet protocol.

(6) NAVIGATION DEVICE.—The term “navigation device” has the meaning given such term in section 76.1200 of title 47, Code of Federal Regulations.

(7) VIDEO DESCRIPTION.—The term “video description” has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

(8) VIDEO PROGRAMMING.—The term “video programming” has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

#### PURPOSE AND SUMMARY

H.R. 3101, the “Twenty-First Century Communications and Video Programming Act of 2010”, was introduced on June 26, 2009, by Representative Edward J. Markey (D-MA), and referred to the Committee on Energy and Commerce. H.R. 3101 would update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.

#### BACKGROUND AND NEED FOR LEGISLATION

Although Congress has previously acted to ensure access to communications devices by people with disabilities, these laws were last updated in 1996. Since that time, the communications marketplace has undergone a fundamental transformation, driven by growth in broadband. Internet-based and digital technologies are now pervasive, offering innovative and exciting ways to communicate and share information.

Through increased mobility and the use of data, the benefits of modern technology have profoundly altered our everyday lives, streamlining tasks and allowing mobile access to the Internet and a diverse menu of applications and services. Smart phones, global positioning systems (GPS), and video conferencing are but a few of the many technologies that Americans rely on daily. Many of these advances have improved the communications capabilities of individuals with disabilities. Nevertheless, the extraordinary benefits of these technological advances are often still not accessible to individuals with disabilities.

Various studies have found that people with disabilities suffer disproportionately higher rates of unemployment and poverty than those without disabilities. For example, in 2008, only 40% of working-age people with disabilities were employed, while almost 80% of those without disabilities were working.<sup>1</sup> If certain current and emerging technologies are not accessible to the disabled community, this economic disparity may increase. Enhanced accessibility could help diminish this economic divide.

Elderly Americans are also affected by this measure. The number of people over age 65 living in the United States is approximately 40 million, or 13% of the total population. One estimate shows that by 2050, that number is expected to increase to 88.5 million, or an

<sup>1</sup>See, e.g., Cornell University, *2008 Disabilities Status Report—United States, Rehabilitation and Training Center on Disability Demographics and Statistics*, p.32 (online at <http://www.ilr.cornell.edu/edi/disabilitystatistics/>).

estimated 20% of the population.<sup>2</sup> This growth may be accompanied by a jump in the number of Americans with vision and hearing impairments who will need accessible communications products and services.

Access to communications devices and video programming is also important to American service members, especially those injured in Iraq and Afghanistan. Current studies indicate that 13% of combat troops wounded in hostile operations sustain penetrating eye trauma resulting in vision impairment. Additionally, between 12% and 20% of deployed forces have traumatic brain injury (TBI), and 64% of service members who suffer TBI test positive for visual dysfunction.<sup>3</sup> Finally, 58,000 veterans have reported ringing in their ears after returning from deployment to Iraq or Afghanistan, and the U.S. Department of Veterans Affairs reports that hearing loss will affect 800,000 veterans by 2011.<sup>4</sup>

#### COMMITTEE CONSIDERATION

On June 26, 2009, H.R. 3101, Twenty-First Century Communications and Video Accessibility Act of 2009, was referred to the Committee on Energy and Commerce. The bill was subsequently referred to the Subcommittee on Communications, Technology, and the Internet on July 7, 2009, and the Subcommittee held a legislative hearing on June 10, 2010. The Subcommittee received testimony from witnesses representing the American Council of the Blind, the National Cable and Telecommunications Association, CTIA—The Wireless Association, the Hearing Loss Association of America, the United States Telecom Association, and the Consumer Electronics Association.

On June 30, 2010, the Subcommittee on Communications, Technology, and the Internet met in open markup session to consider H.R. 3101. Subcommittee Chairman Boucher offered a manager's amendment in the form of an amendment in the nature of a substitute that was agreed to by a voice vote. Subsequently, the Subcommittee agreed to forward H.R. 3101, amended, to the full Committee by a voice vote.

On July 21, 2010, the full Committee met in open markup session to consider H.R. 3101, as approved by the Subcommittee. Rep. Boucher offered a manager's amendment in the form of an amendment in the nature of a substitute that was agreed to by a voice vote. Rep. Markey offered an amendment to the Boucher substitute amendment, which was agreed to by a voice vote. Subsequently, the Committee ordered H.R. 3101 favorably reported to the House, amended, by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. A motion by Mr. Waxman ordering H.R. 3101 reported to the House, amended, was

<sup>2</sup>United States Census Bureau, *The Next Four Decades—The Older Population in the United States: 2010–2050* (May 2010) (online at [www.census.gov/prod/2010pubs/p25-1138.pdf](http://www.census.gov/prod/2010pubs/p25-1138.pdf)).

<sup>3</sup>Geoffrey Ling et al., *Explosive Blast Neurotrauma*, *Journal of Neurotrauma* (June 2009).

<sup>4</sup>Army Times, *War is Hell—On Your Hearing* (Apr. 24, 2010) (online at [www.armytimes.com/news/2010/04/offduty\\_hearing\\_042310w/](http://www.armytimes.com/news/2010/04/offduty_hearing_042310w/)).

approved by a voice vote. There were no record votes taken during consideration of this bill.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3101 will result in no new budget authority, entitlement authority, or tax expenditures or revenues.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 3101 are reflected in the descriptive portions of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

#### EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 3101 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

#### APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 3101 requires commercial entities to take a range of steps to improve access by individuals with disabilities to communications services. This bill does not relate to employment or access to public services and accommodations in the legislative branch.

#### FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act of 1974 (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee will rely on the analysis prepared by the Director of the Congressional Budget Office, which at the time of the filing of this report had not been completed.

## COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee will adopt as its own the cost estimate of H.R. 3101 being prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time of the filing of this report, this estimate had not yet been completed.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has not yet received a cost estimate for H.R. 3101 from the Director of Congressional Budget Office.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Title; Table of contents*

Section 1(a) provides that the Act shall be cited as the “Twenty-First Century Communications and Video Programming Act of 2010”. Section 1(b) provides the table of contents for the Act.

*Section 2. Limitation on liability*

Section 2 provides liability protection where an entity is acting as a passive conduit of communications made available through the provision of advanced communications services by a third party or where an entity is providing an information location tool through which an end user obtains access to services and information. This liability protection does not apply to the extent that an entity relies on third-party software or hardware to fulfill the requirements of this Act.

*Section 3. Proprietary technology*

Section 3 prevents the Commission from mandating the use or incorporation of proprietary technology when implementing the requirements of this Act. It is the Committee’s intent that the Commission not mandate the use or incorporation of such technology, to the exclusion of other solutions. While the Commission may indicate that incorporation of a particular technology in specific instances will be sufficient to meet an entity’s responsibilities under this Act, the Committee intends that parties remain free to use alternative solutions so long as they also meet the requirements of this Act as determined by the Commission. It is also the intention of the Committee to express a preference for open source software or any other technology.

## TITLE I—COMMUNICATIONS ACCESS

*Section 101. Definitions*

Section 101 contains several definitions for the Act. The definition of “advanced communications services” includes interconnected Voice over Internet Protocol (VoIP) service, non-interconnected VoIP service, electronic messaging service, and video conferencing service. The term “disability” has the meaning given that term in the Americans with Disabilities Act of 1990.

The term “electronic messaging service” is defined as “a service that provides non-voice messages in text form between individuals over communications networks.” The Committee’s primary concerns regarding the accessibility of electronic messaging services are focused on more traditional, two-way, interactive services such as text messaging, instant messaging, and electronic mail, rather than on communications such as blog posts, online publishing, or messages posted on social networking websites.

The term “video conferencing service” is defined as a service that provides “real-time video communications, including audio, to enable users to share information of the user’s choosing.” The Committee notes that such services may, by themselves, be accessibility solutions. The inclusion, however, of these services within the scope of the requirements of this act is to ensure, in part, that individuals with disabilities are able to access and control these services.

#### *Section 102. Hearing aid compatibility*

Section 102 amends section 710 of the Communications Act to require that equipment that enables voice communications, including equipment used with advanced communications services, be compatible with hearing aids.

#### *Section 103. Relay services*

Section 103 requires providers of VoIP-based services to contribute to the Telecommunications Relay Services Fund. The Commission shall ensure that contributions are made on an equitable basis, taking into account whether such services are offered free to the public. Section 103 also clarifies that in addition to defining “telecommunications relay services” (TRS) as the ability of a person who is deaf, hard of hearing, deaf-blind or has a speech disability to use relay services for the purpose of communicating with hearing individuals, these services may be used where individuals with disabilities need to communicate with other relay users with disabilities, where necessary to achieve functionally equivalent communication. This will be the case, for example, when two or more individuals to a call each have disabilities, but use different types of relay services, depending on their communication needs. In order for communication between or among such individuals to be achieved, more than one type of relay service may be needed to complete the call.

In addition, section 103 creates a Telecommunications Relay Services Policy Advisory Council to advise the Commission in the development or proposal of major changes or rules relating to telecommunications relay services. Section 103 also requires the Commission to report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce within 30 months of enactment with regard to how the Commission is ensuring that TRS customers have access to improved technologies, interoperability, and functionalities as well as identifying impediments to the broad and efficient use of TRS in the workplace. In directing the Commission to develop suggestions to facilitate broader and more efficient use of TRS in the workplace, this section requires suggestions for facilitating the replacement of outdated end-user TRS equipment in public places and government offices.

*Section 104. Access to internet-based services and equipment*

Section 104, which creates new sections 716 and 717 of the Communications Act, requires manufacturers of equipment used for advanced communications services and providers of advanced communications services to make such equipment and services accessible to individuals with disabilities, if doing so is achievable. When providing accessibility is not achievable, a manufacturer or service provider must ensure that such equipment or services are compatible with peripheral devices or specialized customer premise equipment used by individuals with disabilities to achieve access, if doing so is achievable.

For each of these obligations, the Committee intends that the Commission afford manufacturers and service providers as much flexibility as possible, so long as each does everything that is achievable in accordance with the achievability factors. The Committee does not intend to require that every feature and function of every device or service be accessible for every person with any disability. The Committee notes that section 255 of the Communications Act has been implemented by the Federal Communications Commission in such a manner and intends that the Commission implement the requirements of this measure in a similar way.<sup>5</sup>

New sections 716(a) and (b) give manufacturers and service providers a choice regarding how accessibility will be incorporated into a device or service. One option is to build the accessibility into the device or service, if achievable. The other option is to rely on third-party software or hardware to provide accessibility, if achievable. In the latter case, the consumer must pay not more than a nominal fee for the third-party solution. If the manufacturer or service provider relies on a downloadable software solution, the consumer must be able to access the solution. While the Committee does not prescribe a percentage or amount for the purpose of defining what constitutes a nominal fee, such fee should be small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.

It is not the Committee's intention that the "nominal cost" language be construed to force a service provider or manufacturer to incorporate or adopt any particular solution, software, or device, or to force a manufacturer or service provider to subsidize the costs of third-party solutions for consumers. The Committee intends that these provisions provide that the choice of whether to build in accessibility or provide access to a third-party solution that is available at a nominal cost rests solely with the provider or the manufacturer.

The existence of third-party software that is available for purchase by a consumer, even at nominal cost, cannot, by itself, be used to demonstrate that it is "achievable" for the service provider or equipment manufacturer to incorporate that third-party software into its product or service, nor should the existence of such software be given undue weight in the achievability analysis. Finally, the Committee intends that the Commission interpret the accessibility requirements in this provision in the same way as it did for section 255, such that if the inclusion of a feature in a product

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<sup>5</sup> 47 U.S.C. 255



or service results in a fundamental alteration of that service or product, it is *per se* not achievable to include that feature.

New section 716(c) provides that if it is not achievable for a manufacturer or service provider to make its product accessible, the manufacturer or provider shall ensure that the product is compatible with peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so is not achievable.

New section 716(d) states that each advanced communications services provider has a duty not to install network features, functions or capabilities that impede the accessibility or usability of advanced communications services. The Committee intends that the requirements of this section apply where the accessibility or usability of advanced communications services were incorporated in accordance with recognized industry standards.

New section 716(e)(1) gives the Commission one year from the date of enactment to promulgate regulations to implement this section. New section 716(e)(1)(B) provides that advanced communications services and equipment may not impair or impede the accessibility of information content when accessibility has been incorporated into that content. The Committee intends that requirements of this subsection apply where the accessibility of such content has been incorporated in accordance with recognized industry standards.

New section 716(e)(2) requires the Commission to issue prospective guidelines concerning the new accessibility requirements. The Committee notes that the Commission has, in the past, published guidelines concerning accessibility for telecommunication services and equipment that provided industry with greater clarity in meeting those accessibility requirements. It is the intention of the Committee that the Commission's guidance concerning the requirements of this provision makes it easier for industry to gauge what is necessary to fulfill the requirements of this measure. The Committee intends for the Commission to offer guidance that provides industry as much certainty as possible regarding how the Commission will determine compliance with any new obligations.

New section 716(g) enumerates the factors that the Commission shall consider when determining whether the provisions of this section are achievable for a specific device or service. The Committee intends for the Commission to weigh each factor equally when making an achievability determination.

New section 716(g)(1) ensures that the Commission will focus its analysis on the specific product or service in question. New section 716(g)(2) requires the Commission to consider the impact of making a product or service accessible on the operations of the manufacturer or provider, including on the development and deployment of new technologies by that manufacturer. New section 716(g)(3) requires the Commission to consider the financial resources of the manufacturer or provider. The Committee notes that existence of substantial financial resources does not, by itself, trigger a finding of achievability. New section 716(g)(4) requires the Commission to consider the type of operations of the manufacturer or provider. This factor permits the Commission to consider whether the entity offering the product or service has a history of offering advanced communication services or equipment or whether the entity has

just begun to do so. Finally, new section 716(g)(5) directs the Commission to consider whether and to what extent the manufacturer or service provider in question has made available a range of accessible products and services with varying functionality and offered at different price points. The Committee intends that the Commission interpret this factor in a similar manner to the way it has implemented its hearing aid compatibility rules.

New section 716(h) provides the Commission with the flexibility to waive the accessibility requirements for any feature or function of a device that is capable of accessing advanced communication services but is, in the judgment of the Commission, designed primarily for purposes other than accessing advanced communications. For example, a device designed for a purpose unrelated to accessing advanced communications might also provide, on an incidental basis, access to such services. In this case, the Commission may find that to promote technological innovation the accessibility requirements need not apply.

The Commission may also waive the accessibility requirements for certain small businesses and entrepreneurial organizations. The Committee recognizes the importance of small and entrepreneurial innovators and the significant value that they add to the economy. The Committee also recognizes that these entities may not have the legal, financial, or technical capability to incorporate accessibility features and that application of these requirements in this limited case may slow the pace of technological innovation. The Committee finds the Commission is best suited to evaluate and determine which entities may qualify for this exemption, and the Committee expects that the Commission will consult with the Small Business Administration when developing an appropriate definition of “small entity”.

New section 716(i) exempts customized equipment and services from the requirements of this Act. The Committee recognizes that some equipment and services are customized to the unique specifications requested by an enterprise customer. The Committee believes this narrow exemption will encourage technological innovation by permitting manufacturers and service providers to respond to requests from businesses that require specialized and sometimes innovative equipment to provide their services efficiently. This provision is not intended to create an exemption for equipment and services designed for and used by members of the general public.

New section 716(j) clarifies that nothing in this section shall be construed to require a manufacturer or service provider to make every feature and function of every device or service accessible for every disability.

New section 717(a) sets forth the complaint and enforcement procedures for the provisions of sections 716 and 718. To the extent that the Commission finds that a service provider or manufacturer has violated these provisions, the Commission shall provide such entity a reasonable time to bring the service or equipment at issue into compliance. For equipment, the Committee notes that many consumer devices and wireless devices have relatively short life cycles in the marketplace. In these instances, the Committee does not expect the Commission to require retrofitting of such equipment that is already in the market.

New section 717(b) requires the Commission to issue a report to Congress every two years assessing the level of compliance with the requirements of this Act, as well as other matters related to the effectiveness of the Commission's complaint resolution process.

New section 718 requires that the functions on Internet browsers included on smart phones are accessible to and usable by individuals who are blind or have visual impairments, if doing so is achievable. The Committee intends to ensure that service providers and manufacturers have maximum flexibility in implementing this section, while at the same time ensuring that accessibility is achieved. The Committee also intends that the service provider and the manufacturer are each only subject to these provisions with respect to a browser that such service provider or manufacturer directs or specifies to be included on the device.

*Section 105. Emergency Access Advisory Committee*

This section establishes an Emergency Access Advisory Committee (Advisory Committee) to examine issues related to access to emergency services by persons with disabilities. The Advisory Committee will submit recommendations to the Commission regarding the effect of the migration to an Internet-protocol network on access to emergency services by individuals with disabilities, the standards that may be necessary to ensure reliable access to emergency services and to public safety answering points, the potential replacement of TTY technology with more effective next-generation technology, and the updating of rules regarding 9-1-1 and E-911 services.

The Commission has the authority to implement the regulations proposed by the Advisory Committee, as well as any other regulations that are necessary to achieve reliable, interoperable communications that ensures access by persons with disabilities to emergency services. Within 30 months after the date of enactment of the Act, the Commission shall conduct and publish the results of a national survey of individuals with disabilities concerning real time text, geolocation services, instant messaging services, and mobile telecommunications relay services. The survey shall seek to determine what persons with disabilities believe to be the most effective and efficient technologies and methods to enable access to emergency services by persons with disabilities.

*Section 106. Relay services for deaf-blind individuals*

This section authorizes the Commission to support programs that distribute specialized customer premises equipment at subsidized rates to low-income individuals who are deaf-blind. The amount of support that the Commission may authorize from the Telecommunications Services Relay Fund may not exceed \$10 million in any year.

TITLE II—VIDEO PROGRAMMING

*Section 201. Video Programming and Emergency Access Advisory Committee*

Section 201 directs the Chairman of the Commission to establish a Video Programming and Emergency Access Advisory Committee (Advisory Committee) composed of technical experts from entities

that produce video programming, entities that distribute video programming, entities that manufacture equipment used to access video programming, groups representing the disabilities community, and any other individual with relevant technical expertise. The Committee notes that it may be appropriate for the Commission to include an individual from the Architectural and Transportation Barriers Compliance Board. The Advisory Committee is directed to examine technical and performance issues related to closed captioning, video description, access to emergency information provided on video programming, access to video programming guides and menus, and access to video equipment user interfaces. The Committee expects that these reports will form the basis of the Commission's subsequent rulemakings on these matters, but notes that the Commission retains the ability to adopt whatever requirements it sees fit to ensure the objectives of this Act are met. The Committee intends that the Commission periodically review and, if necessary, modify the standards and procedures adopted pursuant to this Act to ensure that Commission's rules keep pace with technological advances.

The Advisory Committee will submit two reports to the Commission within 18 months of the date of enactment of this Act with findings and recommendations for the adoption of performance objectives and procedures.<sup>6</sup> One report, to be submitted within six months of the day of the first meeting of the Advisory Committee, will address closed captioning on video programming delivered using Internet protocol and shall include an identification of the performance objectives for technical procedures and standards needed to ensure the delivery of closed captions on such programming, as well as recommendations for regulations that may be necessary to implement the provisions of this Act.

The second report, to be delivered 18 months after the date of enactment of this Act, will address video description, emergency information, user interfaces, and video programming guides and menus. The report shall include an identification of the performance objectives for technical procedures and standards needed to ensure the delivery of video description services and emergency information using Internet protocol and recommendations for regulations necessary to ensure access to emergency information on programming delivered using Internet protocol. Further, with respect to user interfaces, the report shall include recommendations for the standards, procedures, and protocols used to enable the functions of apparatus that are designed to receive and display video programming so that they are accessible to individuals with disabilities. Finally, with respect to video programming guides and menus, the report shall include recommendations for standards, protocols, and procedures necessary to ensure that such guides and interfaces are accessible.

#### *Section 202. Video description and closed captioning*

Section 202(a) directs the Commission to reinstate the video description rules that were vacated by the United States Court of Appeals for the District of Columbia Circuit in 2002, and grants the

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<sup>6</sup>Video description is a service that provides an audio description of the action or movements occurring on the screen, thereby making video programming more accessible to people with visual disabilities.

Commission authority to expand the hourly requirements of those rules after a period of years and after a series of reports. The old video description rules required that the top 4 television networks distribute 50 hours per quarter of such programming in the top 25 designated market areas (DMAs) and that pay-television providers with 50,000 or more subscribers distribute 50 hours per quarter of such programming from the top 5 cable television networks.

Approximately four years after the date of enactment, the Commission is required to submit a report to Congress on the availability, use, and benefits of video description, the technical and creative issues associated with providing such video description, and the financial costs of providing video description for providers of video programming and program owners. After the Commission submits this report, the Commission shall phase in a requirement that its video description regulations apply in all DMAs. It is the intention of the Committee that video description services be available in all television markets, regardless of size. The Commission does have the flexibility, however, to grant waivers to entities in certain markets in appropriate circumstances.

Two years after the submission of the report, the Commission may issue additional regulations to increase the number of required hours of video described programming by up to 75%, if the Commission determines that the need for and benefits of providing additional video description for video programming are greater than the technical and economic costs of providing such additional descriptions.

Nine years after the date of enactment of the Act, the Commission shall submit an additional report to Congress assessing the types of described video programming that are available to consumers; consumer use of such programming; the costs to program owners, providers, and distributors of creating such programming; the benefits to consumers of such programming; the amount of such programming currently available; and the need for additional described programming. Ten years after the date of enactment, the Commission shall have the authority to require an increase in the amount of available video described programming, including an increase in the number of networks required to provide such programming or the number of hours required to be provided. Any increase in the video description requirement, however, must be based upon the findings, conclusions, and recommendations contained in the report to Congress issued nine years after enactment.

Section 202(a) also directs the Commission to complete a proceeding to identify methods to convey emergency information in a manner that is accessible to individuals who are blind or have vision impairments and to promulgate regulations that require video programming providers, distributors, and owners to convey such information in a manner that is accessible to individuals who are blind or have a visual impairment.

The Committee is aware that emergency alert information is inherently local and time sensitive in nature. Therefore it is the intention of the Committee that the Commission have flexibility with respect to applying the requirements of new section 713(g) to the video programming providers, distributors, and owners that convey the type of video programming that will contain emergency information.

Section 202(b) directs the Commission to promulgate regulations to require the closed captioning of video programming delivered using Internet protocol. The regulations shall apply only to programming that is published or exhibited on television with closed captions after the effective date of the regulations and also distributed using Internet protocol. The Committee intends, at this time, for the regulations to apply to full-length programming and not to video clips or outtakes. Section 202(b) provides that an entity may meet the requirements of this section through alternative means than those prescribed by the regulations promulgated pursuant to this section, so long as the Commission determines that the requirements of this section are met. The Committee intends to afford entities maximum flexibility in meeting the requirement that video programming delivered using Internet protocol be captioned.

The Committee elected to apply the captioning requirement only prospectively and only to programming that is aired on television with captions and also delivered using Internet protocol. The Committee notes that an increasing amount of video programming is being delivered using Internet protocol only on the Internet and without captioning. While the Committee declined to apply the captioning requirement to such programming, the Committee directs the Commission to study the issue and report to the Committee to make recommendations regarding whether it is appropriate to apply the captioning requirement to web-only programming. To gather additional data on the state of the market for captioned Internet-only programming, section 202(b) requires broadcast television networks and cable television networks to report to the Commission, biennially, the number of hours of video programming not published or exhibited on television after the date of enactment of this Act that was provided on the Internet with closed captioning.

*Section 203. Closed captioning decoder and video description capability*

Section 203(a) ensures that devices consumers use to view video programming are able to display closed captions, decode, and make available the transmission of video description services, and decode and make available emergency information. The Committee recognizes that many devices consumers use to view video programming are smaller and often portable. Therefore, the Committee provided that devices with screen sizes of less than 13 inches need only meet these requirements if doing so is achievable.

The Committee has also given the Commission the express authority to waive the requirements of this subsection for any device or class of device. As with the waiver provision in new section 716(h), the Commission may, at its discretion, waive these requirements where, for instance, a consumer typically purchases a product for a primary purpose other than viewing video programming, and access to such programming is provided on an incidental basis.

Section 203(b) provides that devices designed to record video programming enable the rendering or the pass through of closed captions, video description, and emergency information, if doing so is achievable.

Section 203(d)(2) provides that an entity may meet the requirements of this section using alternate means than those prescribed by the regulations promulgated pursuant to this section, so long as

the Commission determines that the requirements of this section are met. The Committee intends to afford entities maximum flexibility in meeting the requirement that video programming delivered using Internet protocol be captioned. Further, the Committee understands that direct broadcast satellite (DBS) providers may have different technical limitations, such as capacity constraints on spot beams used to deliver local signals, than other multichannel video programming distributors. The Committee intends that the Commission consider these limitations when promulgating regulations and, if necessary, provide some flexibility where technical constraints exist. For instance, it may be acceptable for DBS providers to comply with the requirements of rules promulgated under this section by passing through or rendering video description on a high-definition spot beam, so long as any equipment needed to view this programming is provided to subscribers upon request and free of charge and that the requesting subscriber can receive the channels in high-definition format at no additional charge.

*Section 204. User interfaces on digital apparatus*

Section 204(a) requires that user interfaces for devices used to view video programming be accessible, if doing so is achievable. This subsection also requires that remote controls for such devices have a button or a substantially equivalent mechanism dedicated to activating the closed captioning feature and that “closed captions” and “video description” appear on the first menu that appears on any on-screen menu of such a device. The purpose of this provision is to ensure ready access to these features by persons with disabilities.

Section 204(b)(2) provides that an entity may meet the requirements of this section through alternate means than those prescribed by the regulations promulgated pursuant to this section, so long as the Commission determines that the requirements of this section are met.

Section 204(c) provides that devices manufactured to receive or play back the Advanced Television Systems Committee’s Mobile DTV Standard A/153 need not comply with the provisions of this subsection for two years after the date on which such regulations are published in the Federal Register. The Committee notes that the market for mobile broadcast DTV services and equipment is nascent, and that a limited delay is appropriate in this case. The Committee intends that the Commission implement this provision in a technologically neutral manner.

*Section 205. Access to video programming guides and menus provided on navigation devices*

Section 205(a) requires that on-screen text menus and guides provided by navigation devices be audibly accessible to individuals who are blind or have a visual impairment and that the Commission may not prescribe specific technical requirements for meeting this subsection. This section also provides that when navigation devices include built-in closed captioning capability, access to such capability be available through a button, key, icon, or any other mechanism that provides a substantially equivalent level of functionality.

Section 205(b)(4) provides that an entity may satisfy the requirements of this section through the use of software, a peripheral device, or any other solution, so long as such solution is provided at no cost and in a reasonable time to the requesting individual. It is the Committee's intent that these provisions allow providers of navigational devices great flexibility in meeting these requirements, while at the same time ensuring that individuals with disabilities are not burdened with additional costs.

*Section 206. Definitions*

Section 206 contains definitions.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

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SEC. 3. DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires—

(1) *ADVANCED COMMUNICATIONS SERVICES.*—The term “advanced communications services” means—

- (A) *interconnected VoIP service;*
- (B) *non-interconnected VoIP service;*
- (C) *electronic messaging service; and*
- (D) *video conferencing service.*

[(1)] (2) *AFFILIATE.*—The term “affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

[(2)] (3) *AMATEUR STATION.*—The term “amateur station” means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

[(3)] (4) *AT&T CONSENT DECREE.*—The term “AT&T Consent Decree” means the order entered August 24, 1982, in the anti-trust action styled *United States v. Western Electric*, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

[(4)] (5) *BELL OPERATING COMPANY.*—The term “Bell operating company”—

- (A) \* \* \*

\* \* \* \* \*



[(5)] (6) BROADCAST STATION.—The term “broadcast station,” “broadcasting station,” or “radio broadcast station” means a radio station equipped to engage in broadcasting as herein defined.

[(6)] (7) BROADCASTING.—The term “broadcasting” means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

[(7)] (8) CABLE SERVICE.—The term “cable service” has the meaning given such term in section 602.

[(8)] (9) CABLE SYSTEM.—The term “cable system” has the meaning given such term in section 602.

[(9)] (10) CHAIN BROADCASTING.—The term “chain broadcasting” means simultaneous broadcasting of an identical program by two or more connected stations.

[(10)] (11) COMMON CARRIER.—The term “common carrier” or “carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

[(11)] (12) CONNECTING CARRIER.—The term “connecting carrier” means a carrier described in clauses (2), (3), or (4) of section 2(b).

[(12)] (13) CONSTRUCTION PERMIT.—The term “construction permit” or “permit for construction” means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(14) CONSUMER GENERATED MEDIA.—*The term “consumer generated media” means content created and made available by consumers to web sites, including video, audio, and multimedia content.*

[(13)] (15) CORPORATION.—The term “corporation” includes any corporation, joint-stock company, or association.

[(14)] (16) CUSTOMER PREMISES EQUIPMENT.—The term “customer premises equipment” means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

[(15)] (17) DIALING PARITY.—The term “dialing parity” means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among 2 or more telecommunications services providers (including such local exchange carrier).

(18) DISABILITY.—*The term “disability” has the meaning given such term under section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).*

(19) *ELECTRONIC MESSAGING SERVICE.*—The term “electronic messaging service” means a service that provides non-voice messages in text form between individuals over communications networks.

[(16)] (20) *EXCHANGE ACCESS.*—The term “exchange access” means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

[(17)] (21) *FOREIGN COMMUNICATION.*—The term “foreign communication” or “foreign transmission” means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

[(18)] (22) *GREAT LAKES AGREEMENT.*—The term “Great Lakes Agreement” means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

[(19)] (23) *HARBOR.*—The term “harbor” or “port” means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

[(20)] (24) *INFORMATION SERVICE.*—The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(25) *INTERCONNECTED VOIP SERVICE.*—The term “interconnected VoIP service” has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

[(21)] (26) *INTERLATA SERVICE.*—The term “interLATA service” means telecommunications between a point located in a local access and transport area and a point located outside such area.

[(22)] (27) *INTERSTATE COMMUNICATION.*—The term “interstate communication” or “interstate transmission” means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than section 223 thereof), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

[(23)] (28) LAND STATION.—The term “land station” means a station, other than a mobile station, used for radio communication with mobile stations.

[(24)] (29) LICENSEE.—The term “licensee” means the holder of a radio station license granted or continued in force under authority of this Act.

[(25)] (30) LOCAL ACCESS AND TRANSPORT AREA.—The term “local access and transport area” or “LATA” means a contiguous geographic area—

(A) \* \* \*

\* \* \* \* \*

[(26)] (31) LOCAL EXCHANGE CARRIER.—The term “local exchange carrier” means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.

[(27)] (32) MOBILE SERVICE.—The term “mobile service” means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment to the Commission’s Rules to Establish New Personal Communications Services” (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

[(28)] (33) MOBILE STATION.—The term “mobile station” means a radio-communication station capable of being moved and which ordinarily does move.

[(29)] (34) NETWORK ELEMENT.—The term “network element” means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(35) *NON-INTERCONNECTED VOIP SERVICE.*—The term “non-interconnected VoIP service”—

(A) means a service that—

(i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and

(ii) requires Internet protocol compatible customer premises equipment; and

(B) does not include any service that is an interconnected VoIP service.

[(30)] (36) NUMBER PORTABILITY.—The term “number portability” means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

[(31)] (37)(A) OPERATOR.—The term “operator” on a ship of the United States means, for the purpose of parts II and III of title III of this Act, a person holding a radio operator’s license of the proper class as prescribed and issued by the Commission.

\* \* \* \* \*

[(32)] (38) PERSON.—The term “person” includes an individual, partnership, association, joint-stock company, trust, or corporation.

[(33)] (39) RADIO COMMUNICATION.—The term “radio communication” or “communication by radio” means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

[(34)] (40)(A) RADIO OFFICER.—The term “radio officer” on a ship of the United States means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator’s license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a “radio officer” in accordance with the Act of May 12, 1948 (46 U.S.C. 229a–h).

\* \* \* \* \*

[(35)] (41) RADIO STATION.—The term “radio station” or “station” means a station equipped to engage in radio communication or radio transmission of energy.

[(36)] (42) RADIOTELEGRAPH AUTO ALARM.—The term “radiotelegraph auto alarm” on a ship of the United States subject to the provisions of part II of title III of this Act means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. “Radiotelegraph auto alarm” on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this Act or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of title III of this Act, on a foreign ship subject to such part, where the country in which the ship is registered and the United States are not parties to

the same treaty, convention, or agreements prescribing the requirements for such apparatus.

[(37)] (43) RURAL TELEPHONE COMPANY.—The term “rural telephone company” means a local exchange carrier operating entity to the extent that such entity—

(A) \* \* \*

\* \* \* \* \*

[(38)] (44) SAFETY CONVENTION.—The term “safety convention” means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

[(39)] (45)(A) SHIP.—The term “ship” or “vessel” includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

\* \* \* \* \*

[(40)] (46) STATE.—The term “State” includes the District of Columbia and the Territories and possessions.

[(41)] (47) STATE COMMISSION.—The term “State commission” means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

[(42)] (48) STATION LICENSE.—The term “station license,” “radio station license,” or “license” means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission.

[(43)] (49) TELECOMMUNICATIONS.—The term “telecommunications” means 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.

[(44)] (50) TELECOMMUNICATIONS CARRIER.—The term “telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

[(45)] (51) TELECOMMUNICATIONS EQUIPMENT.—The term “telecommunications equipment” means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

[(46)] (52) TELECOMMUNICATIONS SERVICE.—The term “telecommunications service” means 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)] (53) TELEPHONE EXCHANGE SERVICE.—The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

[(48)] (54) TELEPHONE TOLL SERVICE.—The term “telephone toll service” means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

[(49)] (55) TELEVISION SERVICE.—  
(A) \* \* \*

\* \* \* \* \*

[(50)] (56) TRANSMISSION OF ENERGY BY RADIO.—The term “transmission of energy by radio” or “radio transmission of energy” includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

[(51)] (57) UNITED STATES.—The term “United States” means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

(58) VIDEO CONFERENCING SERVICE.—*The term “video conferencing service” means a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.*

[(52)] (59) WIRE COMMUNICATION.—The term “wire communication” or “communication by wire” means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

\* \* \* \* \*

## TITLE II—COMMON CARRIERS

### PART I—COMMON CARRIER REGULATION

\* \* \* \* \*

#### SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this section—

(1) \* \* \*

\* \* \* \* \*

[(3) TELECOMMUNICATIONS RELAY SERVICES.—The term “telecommunications relay services” means telephone transmission services that provide the ability for an individual who has a

hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.】

(3) *TELECOMMUNICATIONS RELAY SERVICES.*—*The term “telecommunications relay services” means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.*

\* \* \* \* \*

(h) *TELECOMMUNICATIONS RELAY SERVICES POLICY ADVISORY COUNCIL.*—

(1) *IN GENERAL.*—*Not later than 6 months after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Chairman of the Commission shall establish an advisory committee to be known as the Telecommunications Relay Services Policy Advisory Council (in this section referred to as the “Policy Advisory Council”) and shall require the Policy Advisory Council—*

(A) *to conduct their meetings in a manner that is open to the public;*

(B) *to make a complete and comprehensive record of such proceedings publicly available;*

(C) *to establish safeguards to identify and mitigate conflicts of interest with respect to members of the Policy Advisory Council; and*

(D) *to advise the Commission in the development or proposal of any major changes or new rules relating to telecommunications relay services;*

(2) *MEMBERSHIP.*—*As soon as practicable after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Chairman of the Commission shall appoint the members of the Policy Advisory Council, ensuring a balance between potential consumers and other stakeholders. Members of the Policy Advisory Council shall be selected from each of the following groups:*

(A) *Individuals who are consumers of telecommunications relay services.*

(B) *Representatives of State commissions with jurisdiction over intrastate telecommunications relay services.*

(C) *Representatives of providers of telecommunications relay services.*

(3) *COLLECTION AND DISSEMINATION OF INFORMATION AND ADVICE.*—*The Commission—*

(A) *shall seek the advice of the Policy Advisory Council in assisting the Commission in developing or proposing any*

major changes or issuing any new rules relating to telecommunications relay services; and

(B) shall, with the advice of the Policy Advisory Council, make all regulations, rules, and orders relating to telecommunications relay services fully and easily accessible to consumers of such services.

(i) FOLLOWUP PROCEEDING.—

(1) IN GENERAL.—Not later than 30 months after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission, in consultation with all relevant Federal agencies, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report—

(A) concerning how the Commission is ensuring that telecommunications relay service customers have access to improved technologies, interoperability, and functionalities; and

(B) identifying impediments to the broad and efficient use of telecommunications relay services in the workplace.

(2) SUGGESTIONS FOR WORKPLACE ADOPTION.—The Commission shall develop suggestions to facilitate broader and more efficient use of telecommunications relay services in the workplace, including suggestions for facilitating the replacement of outdated end-user telecommunications relay services equipment in public places and government offices.

\* \* \* \* \*

**TITLE III—SPECIAL PROVISIONS  
RELATING TO RADIO**

**PART I—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 303. GENERAL POWERS OF COMMISSION.**

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) \* \* \*

\* \* \* \* \*

[(u) Require that apparatus designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size.]

(u) Require that—

(1) apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size—



(A) be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming;

(B) have the capability to decode and make available the transmission and delivery of video description services as required by regulations reinstated and modified pursuant to section 713(f); and

(C) have the capability to decode and make available emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner that is accessible to individuals who are blind or have a visual impairment; and

(2) notwithstanding paragraph (1) of this subsection—

(A) apparatus described in such paragraph that use a picture screen that is less than 13 inches in size meet the requirements of subparagraphs (A), (B), and (C) of such paragraph only if the requirements of such subparagraphs are achievable (as defined in section 716);

(B) any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements of such paragraph; and

(C) the Commission shall have the authority to waive the requirements of this subsection for any apparatus or class of apparatus.

\* \* \* \* \*

(z) Require that—

(1) if achievable (as defined in section 716), apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States, enable the rendering or the pass through of closed captions, video description signals, and emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) so that viewers are able to activate and de-activate the closed captions and video description as the video programming is played back on a picture screen of any size; and

(2) interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit the display of closed captions and to make encoded video description and emergency information audible.

(aa) Require—

(1) if achievable (as defined in section 716), that digital apparatus designed to receive or play back video programming, that are shipped in interstate commerce or manufactured in the United States, transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of all built-in apparatus functions are accessible to and usable by individuals with disabilities;

(2) that if on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions of the apparatus described in paragraph (1), such functions shall be accompanied by audio output that is either integrated

*or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or have a visual impairment in real-time;*

*(3) that built-in user controls on such apparatus shall be capable of accessing closed captioning, including—*

*(A) if a remote control is provided with the apparatus—*

*(i) a button, key, or icon on the remote control of such apparatus designated for activating closed captioning; or*

*(ii) any other mechanism that provides a substantially equivalent level of accessibility; and*

*(B) if on-screen menus are displayed on such apparatus—*

*(i) the inclusion of “closed captions” and “video description” on the first menu that appears; or*

*(ii) any other mechanism that provides a substantially equivalent level of accessibility; and*

*(4) that in applying this subsection the term “apparatus” does not include a navigation device, as such term is defined in section 76.1200 of title 47, Code of Federal Regulations.*

*(bb) Require—*

*(1) if achievable (as defined in section 716), that the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or have a visual impairment, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement; and*

*(2) for navigation devices with built-in closed captioning capability, access to such capability through a button, key, or icon designated for activating the closed captioning, or through any other mechanism that provides a substantially equivalent level of accessibility.*

\* \* \* \* \*

**SEC. 330. PROHIBITION AGAINST SHIPMENT OF CERTAIN TELEVISION RECEIVERS.**

(a) \* \* \*

(b) No person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States, any apparatus described in [section 303(u)] subsections (u) and (z) of section 303 of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section. [Such rules shall provide performance and display standards for such built-in decoder circuitry.] *Such rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming, the transmission and delivery of video description services, and the conveyance of emergency information as required by section 303 of this Act.* Such rules shall further require that all such apparatus be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and display specifications set forth in the Public Broadcasting System engineering report numbered E-

7709-C dated May 1980, as amended by the Telecaption II Decoder Module Performance Specification published by the National Captioning Institute, November 1985. As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that [closed-captioning service continues] *closed-captioning service and video description service continue* to be available to consumers. This subsection shall not apply to carriers transporting such apparatus without trading it.

\* \* \* \* \*

### TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

\* \* \* \* \*

#### SEC. 402. PROCEEDINGS TO ENJOIN, SET ASIDE, ANNUL, OR SUSPEND ORDERS OF THE COMMISSION.

(a) \* \* \*

(b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) \* \* \*

\* \* \* \* \*

(10) *By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under section 717(a)(3).*

\* \* \* \* \*

### TITLE V—PENAL PROVISIONS—FORFEITURES

\* \* \* \* \*

#### SEC. 503. FORFEITURES IN CASES OF REBATES AND OFFSETS.

(a) \* \* \*

(b)(1) \* \* \*

(2)(A) \* \* \*

\* \* \* \* \*

(F) *Subject to paragraph (5) of this section, if the violator is a manufacturer or service provider subject to the requirements of section 255 or 716, and is determined by the Commission to have violated any such requirement, the manufacturer or provider shall be liable to the United States for a forfeiture penalty of not more than \$100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.*

\* \* \* \* \*

## TITLE VII—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

### SEC. 710. TELEPHONE SERVICE FOR THE DISABLED.

(a) \* \* \*

[(b)(1) Except as provided in paragraphs (2) and (3), the Commission shall require that—

[(A) all essential telephones, and

[(B) all telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date,]

*(b)(1) Except as provided in paragraphs (2) and (3) and subsection (c), the Commission shall require that customer premises equipment described in this paragraph provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility. Customer premises equipment described in this paragraph are the following:*

*(A) All essential telephones.*

*(B) All telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date.*

*(C) All customer premises equipment used with advanced communications services that is designed to provide 2-way voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone, subject to the regulations prescribed by the Commission under subsection (e).*

(2)(A) The [initial] regulations prescribed by the Commission under paragraph (1) [of this subsection after the date of enactment of the Hearing Aid Compatibility Act of 1988] shall exempt from the requirements established pursuant to [paragraph (1)(B) of this subsection] *subparagraphs (B) and (C) of paragraph (1) only—*

(i) \* \* \*

(ii) telephones used with private radio services; and

[(iii) cordless telephones; and]

[(iv) *iii* secure telephones.

[(B) The exemption provided by such regulations for cordless telephones shall not apply with respect to cordless telephones manufactured or imported more than three years after the date of enactment of the Hearing Aid Compatibility Act of 1988.]

[(C) The Commission shall periodically assess the appropriateness of continuing in effect the exemptions provided by such regulations for telephones used with public mobile services and telephones used with private radio services.] *(B) The Commission shall periodically assess the appropriateness of continuing in effect the exemptions for telephones and other customer premises equipment described in subparagraph (A) of this paragraph. The Commission shall revoke or otherwise limit any such exemption if the Commission determines that—*

(i) \* \* \*

\* \* \* \* \*

(iii) compliance with the requirements of **[paragraph (1)(B)] subparagraph (B) or (C) of paragraph (1)** is technologically feasible for the telephones to which the exemption applies; and

(iv) compliance with the requirements of **[paragraph (1)(B)] subparagraph (B) or (C) of paragraph (1)** would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

\* \* \* \* \*

(4) For purposes of this subsection—

(A) \* \* \*

(B) the term “**[public mobile] telephones used with public mobile services**” means *telephones and other customer premises equipment used in whole or in part with air-to-ground radio-telephone services, cellular radio telecommunications services, offshore radio, rural radio service, public land mobile telephone service, **[and]** or other common carrier radio communication services covered by **[part 22 of]** title 47 of the Code of Federal Regulations, or any functionally equivalent unlicensed wireless services;*

(C) the **[term “private radio services”]** term “*telephones used with private radio services*” means *telephones and other customer premises equipment used in whole or in part with private land mobile radio services and other communications services characterized by the Commission in its rules as private radio services; and*

\* \* \* \* \*

(c) The Commission shall establish or approve such technical standards as are required to enforce this section. *A telephone or other customer premises equipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for purposes of this section, until such time as the Commission may determine otherwise. The Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards. The Commission may delegate this authority to an employee pursuant to section 5(c). The Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.*

\* \* \* \* \*

(e) In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing **[impairments]** loss. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology. *In implementing the provisions of subsection (b)(1)(C), the Commission shall use appropriate time-tables or benchmarks to the extent necessary (1) due to technical fea-*

sibility, or (2) to ensure the marketability or availability of new technologies to users.

\* \* \* \* \*

[(h) The Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission.]

(h) *RULE OF CONSTRUCTION.*—*Nothing in the Twenty-First Century Communications and Video Accessibility Act of 2010 shall be construed to modify the Commission’s regulations set forth in section 20.19 of title 47 of the Code of Federal Regulations, as in effect on the date of enactment of such Act.*

\* \* \* \* \*

**SEC. 713. VIDEO PROGRAMMING ACCESSIBILITY.**

(a) \* \* \*

\* \* \* \* \*

[(c) **DEADLINES FOR CAPTIONING.**— Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.]

(c) *DEADLINES FOR CAPTIONING.*—

(1) *IN GENERAL.*—*The regulations prescribed pursuant to subsection (b) shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming published or exhibited on television.*

(2) *DEADLINES FOR PROGRAMMING DELIVERED USING INTERNET PROTOCOL.*—

(A) *REGULATIONS ON CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.*—*Not later than 6 months after the submission of the report to the Commission required by section 201(e)(1) of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate regulations to require the provision of closed captioning on video programming delivered using Internet protocol.*

(B) *SCHEDULE.*—*The regulations prescribed under this paragraph shall include an appropriate schedule of decoding for the provision of closed captioning, taking into account whether such programming is prerecorded and edited for Internet distribution, or whether such programming is live or near-live and not edited for Internet distribution.*

(C) *COST.*—*The Commission may delay or waive the regulation promulgated under subparagraph (A) to the extent the Commission finds that the application of the regulation to live video programming delivered using Internet protocol would be economically burdensome to providers of video programming or program owners.*

(D) *REQUIREMENTS FOR REGULATIONS.*—

(i) *IN GENERAL.*—*The regulations prescribed under this paragraph—*

(I) *shall contain a definition of “near-live programming” and “edited for Internet distribution”;*

*(II) may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome to the provider of such service, program, or equipment;*

*(III) shall provide that de minimis failure to comply with such regulations by a provider of video programming or program owner shall not be treated as a violation of the regulations; and*

*(IV) shall only apply to video programming that is transmitted for display on television with closed captioning after the effective date of the regulations issued pursuant to this section.*

*(ii) ALTERNATE MEANS.—An entity may meet the requirements of this section through alternate means than those prescribed by regulations pursuant to paragraph (1) if the requirements of this section are met, as determined by the Commission.*

(d) EXEMPTIONS.—Notwithstanding subsection (b)—

(1) \* \* \*

\* \* \* \* \*

**[(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.]**

*(3)(A) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section;*

*(B) the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome;*

*(C) during the pendency of such a petition, such provider or owner shall be exempt from the requirements of this section; and*

*(D) the Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome.*

\* \* \* \* \*

**[(f) VIDEO DESCRIPTIONS INQUIRY.— Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission’s report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.**

[(g) VIDEO DESCRIPTION.— For purposes of this section, “video description” means the insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.]

(f) VIDEO DESCRIPTION.—

(1) REINSTATEMENT OF REGULATIONS.—*On the day that is 1 year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, after a rulemaking, reinstate its video description regulations contained in the Implementation of Video Description of Video Programming Report and Order (15 F.C.C.R. 15,230 (2000)), modified as provided in paragraph (2).*

(2) MODIFICATIONS TO REINSTATED REGULATIONS.—*Such regulations shall be modified only as follows:*

(A) *The regulations shall apply to video programming, as defined in subsection (i), insofar as such programming is transmitted for display on television in digital format.*

(B) *The Commission shall update the list of the top 25 Designated Market Areas, the list of the top 5 national non-broadcast networks that have at least 50 hours per quarter of prime time programming that is not exempt under this paragraph, and the designation of the beginning calendar quarter for which compliance shall be calculated.*

(C) *The regulations may permit a provider of video programming or a program owner to petition the Commission for an exemption from the requirements of this section upon a showing that the requirements contained in this section would be economically burdensome.*

(D) *The Commission may exempt from the regulations established pursuant to paragraph (1) a service, class of services, program, class of programs, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment.*

(E) *The regulations shall not apply to live or near-live programming.*

(F) *The regulations shall provide for an appropriate phased schedule of deadlines for compliance.*

(3) INQUIRIES ON FURTHER VIDEO DESCRIPTION REQUIREMENTS.—*The Commission shall commence the following inquiries not later than 1 year after the completion of the phase-in of the reinstated regulations and shall report to Congress 1 year thereafter on the findings for each of the following:*

(A) VIDEO DESCRIPTION IN TELEVISION PROGRAMMING.—*The availability, use, and benefits of video description on video programming distributed on television, the technical and creative issues associated with providing such video description, and the financial costs of providing such video description for providers of video programming and program owners.*

(B) VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON THE INTERNET.—*The technical and operational issues, costs, and benefits of providing video descriptions*



for video programming that is delivered using Internet protocol.

(4) CONTINUING COMMISSION AUTHORITY.—

(A) *IN GENERAL.*—The Commission may issue additional regulations if the Commission determines, at least 2 years after completing the reports required in paragraph (3), that the need for and benefits of providing video descriptions for video programming, insofar as such programming is transmitted for display on television, are greater than the technical and economic costs of providing such additional programming. If the Commission makes such a determination and issues additional regulations, the Commission may increase, in total, the hours requirement for described video programming, insofar as such programming is transmitted for display on television, up to 75 percent of the requirement in the regulations reinstated under paragraph (1).

(B) *FURTHER REQUIREMENTS.*—

(i) *REPORT.*—Nine years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report assessing—

(I) the types of described video programming that is available to consumers;

(II) consumer use of such programming;

(III) the costs to program owners, providers, and distributors of creating such programming;

(IV) the benefits to consumers of such programming;

(V) the amount of such programming currently available; and

(VI) the need for additional described programming.

(ii) *INCREASED AVAILABILITY.*—Ten years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall have the authority, based upon the findings, conclusions, and recommendations contained in the report under clause (i), to increase the availability of such programming.

(C) *APPLICATION TO DESIGNATED MARKET AREAS.*—

(i) *IN GENERAL.*—After the Commission completes the study on video description, the Commission shall phase in the video description regulations for all designated market areas, except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate.

(ii) *PHASE-IN DEADLINE.*—The phase-in described under clause (i) shall be completed not later than 6 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010.

(g) *EMERGENCY INFORMATION.*—Not later than 1 year after the Video Programming and Emergency Access Advisory Committee report under section 201(e)(2) of the Twenty-First Century Communications and Video Accessibility Act of 2010 is submitted to the Commission, the Commission shall complete a proceeding to—

(1) identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or have a visual impairment; and

(2) promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or have a visual impairment.

(h) *RESPONSIBILITIES.*—

(1) *VIDEO PROGRAMMING OWNER.*—A video programming owner shall ensure that any closed captioning and video description required pursuant to this section is provided in accordance with the technical standards, protocols, and procedures established by the Commission.

(2) *VIDEO PROGRAMMING PROVIDER OR DISTRIBUTOR.*—A video programming provider or video programming distributor shall be deemed in compliance with this section and the rules and regulation promulgated thereunder if such provider or distributor enables the rendering or the pass through of closed captions and video description signals.

(i) *DEFINITIONS.*—For purposes of this section, section 303, and section 330:

(1) *VIDEO DESCRIPTION.*—The term “video description” means the insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.

(2) *VIDEO PROGRAMMING.*—The term “video programming” has the meaning given such term in section 602.

[(h)] (j) *PRIVATE RIGHTS OF ACTIONS PROHIBITED.*—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

\* \* \* \* \*

**SEC. 715. INTERNET PROTOCOL-BASED RELAY SERVICES.**

Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on the date of enactment of such Act, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.

**SEC. 716. ACCESS TO INTERNET-BASED EQUIPMENT AND SERVICES.**

(a) *ACCESS TO EQUIPMENT.*—

(1) *RIGHT TO ACCESSIBLE EQUIPMENT.*—With respect to equipment manufactured after the effective date of the regulations established pursuant to this section, and subject to those regulations, a manufacturer of equipment used for advanced communications, including end user equipment, network equipment, and software, shall ensure that such equipment that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless doing so is not achievable.

(2) *INDUSTRY FLEXIBILITY.*—A manufacturer of equipment may satisfy the requirements of paragraph (1) with respect to such equipment by—

(A) ensuring that the equipment that such manufacturer offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

(B) if such manufacturer chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

(b) *ACCESS TO SERVICES.*—

(1) *RIGHT TO ACCESSIBLE SERVICES.*—With respect to advanced communications services offered after the effective date of the regulations established pursuant to this section, and subject to those regulations, a provider of services used for advanced communications shall ensure that such services that such provider offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless doing so is not achievable.

(2) *INDUSTRY FLEXIBILITY.*—A provider of services may satisfy the requirements of paragraph (1) with respect to such services by—

(A) ensuring that the services that such provider offers are accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

(B) if such provider chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

(c) *COMPATIBILITY.*—Whenever the requirements of subsection (a) are not achievable for a manufacturer, or the requirements of subsection (b) are not achievable for a provider, a manufacturer or provider shall ensure that its equipment or service is compatible with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless the requirement of this subsection is not achievable.

(d) *NETWORK FEATURES, FUNCTIONS, AND CAPABILITIES.*—Each provider of advanced communications services has the duty not to install network features, functions, or capabilities that impede accessibility or usability of advanced communications services.

## (e) REGULATIONS.—

(1) *IN GENERAL.*—*Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall—*

(A) *include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities;*

(B) *provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through advanced communications services, equipment used for advanced communications services, or networks used to provide advanced communications services; and*

(C) *determine the obligations under this section of manufacturers, service providers, and providers of applications.*

(2) *PROSPECTIVE GUIDELINES.*—*The Commission shall issue prospective guidelines for a manufacturer or provider regarding the requirements of this section.*

(f) *SERVICES AND EQUIPMENT SUBJECT TO SECTION 255.*—*The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010. Such services and equipment shall remain subject to the requirements of section 255.*

(g) *ACHIEVABLE DEFINED.*—*For purposes of this section and section 717, the term “achievable” means with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:*

(1) *The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question.*

(2) *The impact on the operations of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.*

(3) *The financial resources of the manufacturer or provider.*

(4) *The type of operations of the manufacturer or provider.*

(5) *The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.*

## (h) COMMISSION FLEXIBILITY.—

(1) *WAIVER.*—*The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider, to waive the requirements of this section for any feature or function of equipment used to provide or access ad-*

vanced communications services, or for any class of such equipment, that—

(A) is capable of accessing an advanced communications service; and

(B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

(2) **SMALL ENTITY EXEMPTION.**—The Commission may exempt small entities from the requirements of this section.

(i) **CUSTOMIZED EQUIPMENT OR SERVICES.**—The provisions of this section shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(j) **RULE OF CONSTRUCTION.**—This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.

**SEC. 717. ENFORCEMENT AND RECORDKEEPING OBLIGATIONS.**

(a) **COMPLAINT AND ENFORCEMENT PROCEDURES.**—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255 or 716, establish procedures for enforcement actions by the Commission with respect to such violations, and implement the recordkeeping obligations of paragraph (5) for manufacturers and providers subject to such sections. Such regulations shall include the following provisions:

(1) **NO FEE.**—The Commission shall not charge any fee to an individual who files a complaint alleging a violation of section 255 or 716.

(2) **RECEIPT OF COMPLAINTS.**—The Commission shall establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints filed under section 255 or 716.

(3) **COMPLAINTS TO THE COMMISSION.**—

(A) **IN GENERAL.**—Any person alleging a violation of section 255 or 716 by a manufacturer of equipment or provider of service subject to such sections may file a formal or informal complaint with the Commission.

(B) **INVESTIGATION OF INFORMAL COMPLAINT.**—The Commission shall investigate the allegations in an informal complaint and, within 180 days after the date on which such complaint was filed with the Commission, issue an order concluding the investigation, unless such complaint is resolved before such time. The order shall include a determination whether any violation occurred.

(i) **VIOLATION.**—If the Commission determines that a violation has occurred, the Commission may, in the order issued under this subparagraph or in a subsequent order, require the manufacturer or service provider to take such action as is necessary to comply with the requirements of this section.

(ii) *NO VIOLATION.*—If a determination is made that a violation has not occurred, the Commission shall provide the basis for such determination.

(C) *CONSOLIDATION OF COMPLAINTS.*—The Commission may consolidate for investigation and resolution complaints alleging substantially the same violation.

(4) *OPPORTUNITY TO RESPOND.*—Before the Commission makes a determination pursuant to paragraph (3), the party that is the subject of the complaint shall have a reasonable opportunity to respond to such complaint, and may include in such response any factors that are relevant to such determination.

(5) *RECORDKEEPING.*—

(A) *IN GENERAL.*—Beginning one year after the effective date of regulations promulgated pursuant to section 716(e), each manufacturer and provider subject to sections 255 and 716 shall maintain, in the ordinary course of business and for a reasonable period, records of any efforts taken by such manufacturer or provider to implement sections 255 and 716, including the following:

(i) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities.

(ii) Descriptions of the accessibility features of its products and services.

(iii) Information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

(B) *SUBMISSION OF ANNUAL CERTIFICATION.*—An officer of a manufacturer or provider shall submit to the Commission an annual certification that records are being kept in accordance with subparagraph (A).

(C) *COMMISSION REQUEST FOR RECORDS.*—After the filing of a formal or informal complaint against a manufacturer or provider in the manner prescribed in paragraph (3), the Commission may request, and shall keep confidential, a copy of the records maintained by such manufacturer or provider pursuant to subparagraph (A) of this paragraph that are directly relevant to the equipment or service that is the subject of such complaint.

(6) *FAILURE TO ACT.*—If the Commission fails to carry out any of its responsibilities to act upon a complaint in the manner prescribed in paragraph (3), the person that filed such complaint may bring an action in the nature of mandamus in the United States Court of Appeals for the District of Columbia to compel the Commission to carry out any such responsibility.

(7) *COMMISSION JURISDICTION.*—The limitations of section 255(f) shall apply to any claim that alleges a violation of section 255 or 716. Nothing in this paragraph affects or limits any action for mandamus under paragraph (6) or any appeal pursuant to section 402(b)(10).

(8) *PRIVATE RESOLUTIONS OF COMPLAINTS.*—Nothing in the Commission's rules or this Act shall be construed to preclude a person who files a complaint and a manufacturer or provider

from resolving a formal or informal complaint prior to the Commission's final determination in a complaint proceeding. In the event of such a resolution, the parties shall jointly request dismissal of the complaint and the Commission shall grant such request.

(b) **REPORTS TO CONGRESS.**—

(1) **IN GENERAL.**—Every two years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes the following:

(A) An assessment of the level of compliance with sections 255 and 716.

(B) An evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.

(C) The number and nature of complaints received pursuant to subsection (a) during the two years that are the subject of the report.

(D) A description of the actions taken to resolve such complaints under this section, including forfeiture penalties assessed.

(E) The length of time that was taken by the Commission to resolve each such complaint.

(F) The number, status, nature, and outcome of any actions for mandamus filed pursuant to subsection (a)(6) and the number, status, nature, and outcome of any appeals filed pursuant to section 402(b)(10).

(G) An assessment of the effect of the requirements of this section on the development and deployment of new communications technologies.

(2) **PUBLIC COMMENT REQUIRED.**—The Commission shall seek public comment on its tentative findings prior to submission to the Committees of the report under this subsection.

(c) **COMPTROLLER GENERAL ENFORCEMENT STUDY.**—

(1) **IN GENERAL.**—The Comptroller General shall conduct a study to consider and evaluate the following:

(A) The Commission's compliance with the requirements of this section, including the Commission's level of compliance with the deadlines established under and pursuant to this section and deadlines for acting on complaints pursuant to subsection (a).

(B) Whether the enforcement actions taken by the Commission pursuant to this section have been appropriate and effective in ensuring compliance with this section.

(C) Whether the enforcement provisions under this section are adequate to ensure compliance with this section.

(D) An assessment of the effect of the requirements of this section on the development and deployment of new communications technologies.

(2) **REPORT.**—Not later than 5 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Comptroller General shall submit to the Committee on Commerce, Science, and Transportation of

*the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study required by paragraph (1), with recommendations for how the enforcement process and measures under this section may be modified or improved.*

(d) **CLEARINGHOUSE.**—*Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, in consultation with the Architectural and Transportation Barriers Compliance Board, the National Telecommunications and Information Administration, trade associations, and organizations representing individuals with disabilities, establish a clearinghouse of information on the availability of accessible products and services and accessibility solutions required under sections 255 and 716. Such information shall be made publicly available on the Commission’s website and by other means, and shall include an annually updated list of products and services with access features.*

(e) **OUTREACH AND EDUCATION.**—*Upon establishment of the clearinghouse of information required under subsection (d), the Commission, in coordination with the National Telecommunications and Information Administration, shall conduct an informational and educational program designed to inform the public about the availability of the clearinghouse and the protections and remedies available under sections 255 and 716.*

**SEC. 718. INTERNET BROWSERS BUILT INTO TELEPHONES USED WITH PUBLIC MOBILE SERVICES.**

(a) **ACCESSIBILITY.**—*If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B)) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subsection shall not impose any requirement on such manufacturer or provider—*

*(1) to make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or*

*(2) to make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications or services).*

(b) **INDUSTRY FLEXIBILITY.**—*A manufacturer or provider may satisfy the requirements of subsection (a) with respect to such telephone or services by—*

*(1) ensuring that the telephone or services that such manufacturer or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or*

*(2) using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.*



**SEC. 719. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.**

(a) *IN GENERAL.*—Within 6 months after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall establish rules that define as eligible for relay service support those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including inter-exchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind.

(b) *INDIVIDUALS WHO ARE DEAF-BLIND DEFINED.*—For purposes of this section, the term “individuals who are deaf-blind” has the meaning given such term in section 206 of the Helen Keller National Center Act (29 U.S.C. 1905).

(c) *ANNUAL AMOUNT.*—The total amount of support the Commission may provide from its Telecommunications Relay Services Fund for any fiscal year may not exceed \$10,000,000.

