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2d Session }

SENATE

{ REPORT  
{ 111-386

TWENTY-FIRST CENTURY COMMUNICATIONS  
AND VIDEO ACCESSIBILITY ACT OF 2010

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 3304



DECEMBER 22, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

R E P O R T

[To accompany S. 3304]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3304), 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, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 3304 is to 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 NEEDS

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 sometimes 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 percent of working-age people with disabilities were employed, while almost 80 percent 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 percent of the total population. One estimate shows that by 2050, that number is expected to increase to 88.5 million, or an estimated 20 percent 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 percent of combat troops wounded in hostile operations sustain penetrating eye trauma resulting in vision impairment. Additionally, between 12 percent and 20 percent of deployed forces have traumatic brain injury (TBI), and 64 percent 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>

#### SUMMARY OF PROVISIONS

S. 3304, the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “Act”), will update the communications laws to help ensure that individuals with visual, auditory, or speech disabilities are able to fully utilize communications services and equipment and better access video programming.

The bill provides for amendments to current provisions of the Communications Act of 1934. First, the bill would amend section 710 to require that telephones and two-way voice communications equipment functioning as telephones meet certain requirements to ensure hearing aid compatibility. Second, the bill would amend section 225 to require providers of VoIP-based services to contribute to the Telecommunications Relay Services Fund. Third, the bill would amend section 225 to clarify that telecommunications relay services (TRS) are intended to ensure that people with hearing or

<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/>).

<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/)).

speech disabilities can use TRS to communicate with others who have hearing or speech disabilities, as well as people who do not have hearing or speech disabilities.

The bill also would create new sections of the Communications Act. New sections 716 and 717 would require that manufacturers of advanced communications services (ACS) equipment and providers of ACS services make their equipment and services accessible to individuals with disabilities if doing so is achievable. The bill would require the FCC to consider a set of factors when making an achievability determination, weighing each factor equally. The bill aims to provide the Commission with greater flexibility when it comes to enforcing the accessibility requirement, permitting the Commission to waive this requirement if, in its judgment, a device incidentally provides access to ACS or was designed primarily for another purpose.

Finally, the bill would update the communications laws by creating standalone provisions of the Act. These provisions are intended to ensure that individuals with disabilities are able to utilize fully the essential advanced technologies that have developed since the passing of the Americans with Disabilities Act and subsequent statutes addressing communications accessibility. The bill would grant the FCC the authority to financially support programs that distribute specialized customer premises equipment to low-income individuals who are deaf-blind. The bill also would create an advisory committee to assist the Commission by examining the effect of the migration to an Internet-protocol network on disabled individuals' access to emergency services. The bill would require the advisory committee to submit recommendations to the Commission that the committee deems necessary for ensuring access to emergency services by individuals with disabilities.

Regarding video programming, the bill would create a second advisory committee to assist the FCC by examining technical issues related to closed captioning and video description, as well as access to equipment user interfaces, programming guides and menus, and emergency information provided on video programming. The bill would require the committee to submit two reports to the FCC, the contents of which would likely form the basis of the Commission's rulemakings on these matters. The bill also would reinstate the Commission's video description rules that were vacated by the United States Court of Appeals for the District of Columbia Circuit in 2002, and grant the Commission the authority to expand upon those rules. Under the bill, the FCC would be required to revise its regulations to require the closed captioning of video programming distributed using Internet protocol if the programming has been shown on television with closed captioning after the effective date of the regulations.

To ensure that devices used to view video programming are able to display closed captions, deliver video description services, and convey emergency information to blind or visually impaired individuals, the bill would require that such devices be equipped with built-in capabilities to decode and make available the transmission of closed captions, video descriptions, and emergency information. The bill also would require that devices with screen sizes smaller than 13 inches meet these requirements if doing so is achievable. As with the accessibility requirement for ACS equipment and serv-

ices, these accessibility requirements can be waived for a device if the Commission finds that the device's primary purpose or utility is something other than receiving or playing video programming. In addition to devices used to view video programming, the bill would impose requirements on devices designed to record video programming, requiring that these devices enable the rendering or pass through of closed captions, video descriptions, and emergency information if doing so is achievable.

To ensure that user interfaces on digital apparatus and on-screen menus and guides on navigation devices are accessible to individuals with disabilities, the bill would require that each have built-in closed captioning capability. The bill also would require the user interfaces have built-in video description features. In each case, the feature or capability would need to be accessible through a mechanism that is reasonably comparable to a button, key, or icon.

#### LEGISLATIVE HISTORY

S. 3304 was introduced on May 4, 2010, by Senator Pryor and was referred to the Committee on Commerce, Science, and Transportation. Senators Conrad, Dorgan, and Kerry are original cosponsors. On May 26, 2010, the Committee held a hearing entitled "Innovation and Inclusion: the Americans with Disabilities Act at 20." On July 15, 2010, the Committee considered the bill in an open Executive Session, and, by voice vote, ordered S. 3304 reported with an amendment in the nature of a substitute.

#### ESTIMATED COSTS

In compliance with subsection (b)(2) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraph (1) of that subsection in order to expedite the business of the Senate.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

S. 3304, as reported, would ensure that individuals with disabilities have access to emerging Internet Protocol-based communication and video programming technologies in the 21st century. Implementation of the legislation would update the scope of those regulated under communications disability law; the bill would not create a burdensome paperwork requirement, nor would it adversely impact the economy or individual privacy.

#### NUMBER OF PERSONS COVERED

S. 3304 would update existing communications law so that individuals with disabilities would gain access to the devices, programming, content, and applications that became available through recent technological advances.

## ECONOMIC IMPACT

S. 3304 is not expected to have an adverse impact on the nation's economy. In fact, the legislation would make communications devices, programming, online content, applications, and services more accessible to the more than 54 million Americans with disabilities. This will increase consumer demand for these products and spur economic growth.

## PRIVACY

S. 3304 will not negatively impact the privacy of individuals.

## PAPERWORK

S. 3304 would not explicitly require an increase in paperwork for those regulated. As part of the legislation, however, the Federal Communications Commission (FCC) is charged with ensuring the compliance of manufacturers and providers of internet-based equipment and services to the bill's provisions, so the bill could possibly increase paperwork requirements if the FCC deems it the best course of action. S. 3304 would require the FCC and the Comptroller General to issue reports on the implementation of the bill's provisions in order to ensure the goals of the legislation are met.

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Title; Table of contents*

Section 1(a) provides that the Act shall be cited as the "Twenty-First Century Communications and Video Accessibility Act of 2010" (the "Act"). 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.

## 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 "consumer generated media" encompasses content created and made available by consumers to Internet websites

and venues, including audio, video, and multimedia content. 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 “interconnected VoIP service” means the same as it does in title 47 of the Code of Federal Regulations, as such title may be amended from time to time. The definition of “non-interconnected VoIP service” includes a service that provides real-time voice communications, where such communications originate begin or end at the user’s location using Internet protocol or any successor protocol. The non-interconnected service must require the user to have customer premises equipment that is Internet protocol compatible. “Interconnected VoIP services” are specifically excluded from the group of services classified as “non-interconnected VoIP services” under the Act.

The term “interoperable 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 provide that the Federal Communications Commission (the “Commission”) shall require all essential telephones, all telephones manufactured in the US more than one year after the date of enactment, and all two-way voice communications equipment designed to be functionally equivalent to a telephone to provide internal equipment that meets established technical standards for hearing aid compatibility. It also requires the Commission to continually assess exemptions to this section and consult with the public in establishing or approving technical standards.

#### *Section 103. Relay services*

Section 103 amends section 225 of the Communications Act to require 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, and may also consider administrative costs to the provider when calculating contributions. Taking these facts into account, the Commission may determine that an obligation for any one provider could be zero or a de minimis amount. 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 administering this section, the Commission shall make reasonable efforts to prevent waste, fraud, and abuse.

Section 103 also amends title VII of the Communications Act to require each VoIP service provider, within one year after the date of enactment of the Act, to participate and contribute to the TRS Fund in conformance with regulations to be prescribed by the Commission for the purpose of ensuring that the obligations of VoIP service providers “are consistent with and comparable to” those of other contributors to the TRS Fund.

*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 any such equipment, which they design, develop, and fabricate, accessible to individuals with disabilities, if doing so is achievable. The Section also requires advanced communications services providers to make any such services, which they offer, 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.

Within one year after the enactment of this Act, the Commission shall prescribe regulations as necessary to implement new section 716. When prescribing regulations under this section, it is the Committee’s intention that the Commission refrain from imposing mandatory technical standards upon advanced communications services equipment manufacturers and/or advanced communications service providers, or requiring them to use or incorporate specific proprietary technology. However, if necessary to aid manufacturers and service providers in achieving compliance, the Commission may adopt technical standards and allow manufacturers and service providers to qualify for a safe harbor by meeting those standards.

New sections 716(a) and 716(b) require that manufacturers and service providers, respectively, make their devices and services accessible to individuals with disabilities, if achievable. It is the Committee’s intent that these obligations apply to the specific equipment or services to the extent that they are used for advanced communications services.

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 compat-

ible 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) gives the Commission one year from the date of enactment to promulgate regulations to implement this section. New section 716(e)(2) 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(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) requires the Commission to consider the nature and cost of the steps needed to make the specific equipment or service in question accessible. The Committee intends for the Commission to consider how such steps, if required, would impact the specific equipment or service in question. New section 716(g)(2) requires the Commission to consider the economic and technical 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 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)(4) 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.

New section 717(a) sets forth the complaint and enforcement procedures for the provisions of section 716. 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 717(c) requires the Comptroller General to conduct a study to consider and evaluate the Commission's compliance with new section 717, including its level of compliance with the deadlines established in and in accordance with new section 717 and with the deadlines for acting on complaints in accordance with subsection (a) of new section 717. The Comptroller General's study must also consider and evaluate whether the Commission's enforcement actions under new section 717 have been fitting and successful in ensuring compliance with new section 717, whether enforcement provisions under the section are sufficient to ensure compliance the section, and whether the section's requirements have any effect on the development and deployment of new communications technologies and the extent of that effect, if any. New section 717(c) also requires the Comptroller General to submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce. The report must include recommendations for how the section's enforcement process and measures can be improved or modified.

New section 717(d) requires the Commission to establish a clearinghouse of information on the availability of accessible products and services and accessibility solutions required under sections 255 and 716 of the Communications Act. This clearinghouse must be established within one year after the date of the Act's enactment and must be made publicly available on the Commission's website and by other means. The clearinghouse must also include a list of products and services with access features, which is to be updated annually. The Commission is required to establish the clearinghouse in consultation with the Architectural and Transportation Barriers Compliance Board, the National Telecommunications and Information Administration, trade associations, and organizations representing individuals with disabilities.

New section 717(e) requires the Commission, upon establishing the clearinghouse pursuant to subsection (d), to conduct an educational and informational program designed to inform the public about the clearinghouse and the protections and relief available under sections 255 and 716 of the Communications Act. This program must be conducted in coordination with the National Telecommunications and Information Administration.

*Section 105. 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 interstate relay fund may not exceed \$10 million in any fiscal year.

*Section 106. Emergency Access Advisory Committee*

This section establishes an Emergency Access Advisory Committee (Advisory Committee) to examine issues related to access to emergency services by individuals 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, and taking into account technical and economic feasibility, 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 recommendations proposed by the Advisory Committee, as well as any other regulations, technical standards, protocols, and procedures that are necessary to achieve reliable, interoperable communications that ensures access by persons with disabilities to emergency services, where achievable and technically feasible. Within one year of the completion of the member appointment process for the Advisory Committee, the Commission shall conduct a national survey of individuals with disabilities, soliciting input from the groups described in subsection (b)(2), to determine the most effective and efficient technologies and methods for enabling access to emergency services by persons with disabilities.

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. Spe-

cifically, the Commission shall adopt the recommendations contained in the reports if the Commission finds that the reports' recommendations adequately meet the Act's objectives. However, if the Commission finds that the reports' recommendations are inadequate in meeting the Act's objectives, then the Commission shall adopt the protocols, procedures, standards, or other technical requirements it determines necessary for fulfilling the Act's objectives. 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 requirements and procedures.<sup>5</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 requirements for protocols, technical capabilities, and technical procedures needed to ensure the delivery of closed captions on such programming, to the extent that such programming does not include consumer generated media, as well as recommendations for technical standards to address the abovementioned performance requirements and 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 a suggested schedule of deadlines for the provision of video description and emergency information. The report shall also include an identification of the performance requirement for protocols, technical capabilities, and technical procedures needed to ensure the delivery of video description services and emergency information using Internet protocol and recommendations for technical standards and regulations necessary to ensure access to emergency information on programming delivered using Internet protocol, excluding consumer generated media. 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.

Not later than six months after the date on which the Advisory Committee submits the first report, the Commission shall take all steps necessary to adopt relevant protocols, procedures, standards, and other technical requirements needed to facilitate access to closed captions for video programming delivered using Internet protocol. Additionally, not later than 18 months after the date on which the Advisory Committee submits the second report, the Com-

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<sup>5</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.

mission shall take all necessary steps to adopt relevant protocols, procedures, standards, and other technical requirements needed to facilitate access to emergency information and video descriptions for video programming—except for consumer generated media—delivered using Internet protocol or digital broadcast television.

*Section 202. Video description and closed captioning*

Section 202(a) amends section 713 of the Communications Act<sup>6</sup> to direct 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 to make only the following modifications to those rules. First, the reinstated rules will only apply to video programming that is transmitted for display on television in digital format. Second, the Commission is directed to update the list of the top 25 designated market areas, the list of the top 5 cable television networks, and the beginning calendar quarter for which compliance will be calculated. Third, the reinstated rules may allow providers of video programming or program owners to petition the Commission for an exemption from the requirements of section 713 upon a showing that those requirements would be economically burdensome. Fourth, the Commission may exempt from the reinstated rules a service, class of services, program, class of programs, equipment, or class of equipment for which the Commission has determined that the application of those rules would be economically burdensome for the provider of such service, program, or equipment. Fifth, the reinstated rules must not apply to live or near-live programming. Sixth, the reinstated rules must provide for a fitting phased schedule of deadlines for compliance. Finally, the Commission must consider extending the exemptions and limitations contained in the reinstated rules to all video programming owners and providers for technical capability reasons.

No later than a year after the completed phase-in of the reinstated video description rules, the Commission must commence two inquiries. The first inquiry will be for the purpose of obtaining information on 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 video description for providers of video programming and program owners. The second inquiry will be for the purpose of obtaining information on the technical and operational issues, costs, and benefits of video description on video programming distributed using Internet protocol. No later than a year after the above-mentioned deadline for initiating the inquiries, the Commission is required to submit a report to Congress on its findings for each of the inquiries.

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 proceeding must be com-

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<sup>6</sup> 47 U.S.C. 613.

pleted no later than one year after the date on which the Advisory Committee report is submitted to the Commission pursuant to section 201(e)(2) of this Act.

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.

Video programming owners must make certain that any closed captioning and video description required under this section is provided in a manner that conforms to the technical standards, protocols and procedures established by the Commission. A video programming provider or distributor will be deemed in compliance with this section and all of the rules and regulations promulgated pursuant to this section if the provider or distributor facilitates the rendering or pass through of closed captions and video description signals.

Finally, section 202(a) defines "video programming" and provides a new definition for "video description." "Video description" is defined as the placing of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue. The term "video programming" includes programming by a television broadcast station and programming comparable to that which is provided by a television broadcast station. Consumer-generated media is specifically excluded from the definition of "video programming."

Section 202(b) further amends section 713 of the Communications Act to require the inclusion of an appropriate schedule of deadlines for the provision of closed captioning of video programming once published or exhibited on television. Section 202(b) also directs the Commission to revise its 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 regulations must include an appropriate schedule of deadlines for the provision of closed captioning, and the schedule shall take 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. These regulations may be waived to the extent that the Commission finds that their application to live programming delivered using Internet protocol with captions after the effective date of such regulations would be economically burdensome to video programming providers or owners. The regulations must contain definitions for "near-live programming" and "edited for Internet distribution," and they may exempt any service, class of service, program, equipment, or class of equipment for which the Commission has determined that the application of the regulations would be economically burdensome for the provider of such service, program, or equipment. The regulations shall also provide that de minimis failure to comply with such regulations by a provider or owner of video programming shall not be treated as a violation of the regulations. The Committee in-

tends, at this time, for the regulations to apply to full-length programming and not to video clips or outtakes. 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 recognizes that online video distributors that are not multichannel video programming distributors may not be able to readily ascertain whether programs were distributed on television and thus subject to the closed captioning requirement. Accordingly, the Committee encourages the Commission to recognize good faith efforts to identify video programming subject to the Act. Additionally, the Commission may work to encourage the development of technology to accurately identify video programming subject to this section.

Section 202(c) is a conforming amendment. The Committee encourages the Commission, in its determination of “economically burdensome” to use the factors listed in section 713(e).

*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 whose primary purpose or essential utility is something other than receiving or playing video programming simultaneously transmitted with sound. This waiver provision is similar to the waiver provision in new section 716(h) in that the Commission may, at its discretion, waive the 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. Waiver may occur on the Commission’s own motion or in response to a manufacturer’s petition.

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 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. However, the Commission may not prescribe specific technical requirements for meeting this subsection. This subsection also requires that a device used to view video programming have built-in access to closed captioning and video description features and that such access be given by means of a key, button, icon, or similar mechanism. The purpose of this provision is to ensure ready access to these features by individuals with disabilities.



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 reasonably comparable mechanism. When dealing with apparatus features and functions delivered in software, the requirements of this subsection shall apply to the software manufacturer, and when dealing with apparatus features and functions delivered in hardware, the same requirements shall apply to the hardware manufacturer.

Section 205(b)(4) provides that an entity providing the navigation device to the requesting blind or visually impaired individual may satisfy the requirements of this section through the use of software, a peripheral device, or any other solution, so long the entity provides such solution at no cost and in a reasonable amount of time to the requesting individual, and the entity ensures that such solution provides the access mandated by the regulations that the Commission implements pursuant to section 205(b)(1). 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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

### COMMUNICATIONS ACT OF 1934

#### SEC. 3. DEFINITIONS

[47 U.S.C. 153]

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) *interoperable video conferencing service.*

(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.

(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.

(4) *AT&T CONSENT DECREE.*—The term “AT&T Consent Decree” means the order entered August 24, 1982, in the antitrust 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.

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

(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and

Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(B) includes any successor or assign of any such company that provides wireline telephone exchange service; but

(C) does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B).

(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.

(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.

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

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

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

(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.

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

(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 online sites and venues on the Internet, including video, audio, and multimedia content.

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

(14) 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) 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).

(16) 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).*

(17) ELECTRONIC MESSAGING SERVICE.—*The term “electronic messaging service” means a service that provides real-time or near real-time non-voice messages in text form between persons over communications networks.*

(18) 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.

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

(20) 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.

(21) 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.

(22) 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.

(23) 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.*

(24) 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.

(25) INTEROPERABLE VIDEO CONFERENCING SERVICE.—*The term “interoperable 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*

(26) 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 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.

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

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

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

(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission.

(30) 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.

(31) 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.

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

(33) 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.

(34) 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.*

(35) 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.

(36) OPERATOR.—

(A) “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.

(B) “Operator” on a foreign ship means, for the purpose of part II of title III of this Act, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

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

(38) 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.

(39) RADIO OFFICER.—

(A) “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 USC 229a-h).

(B) "Radio officer" on a foreign ship 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 certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

(40) RADIO STATION.—The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(41) 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 agreement prescribing the requirements for such apparatus.

(42) RURAL TELEPHONE COMPANY.—The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(43) 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.

(44) SHIP.—

(A) “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.

(B) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(C) A cargo ship means any ship not a passenger ship.

(D) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(E) “Nuclear ship” means a ship provided with a nuclear powerplant.

(45) STATE.—The term “State” includes the District of Columbia and the Territories and possessions.

(41) 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.

(46) 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.

(47) 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.

(48) 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.

(49) TELECOMMUNICATIONS EQUIPMENT.—The term “telecommunications equipment” means equipment, other than customer premises equipment, used by a carrier to provide tele-



communications services, and includes software integral to such equipment (including upgrades).

(50) 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.

(51) 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.

(52) 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.

(53) TELEVISION SERVICE.

(A) ANALOG TELEVISION SERVICE.—The term “analog television service” means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(a) of its regulations (47 C.F.R. 73.682(a)).

(B) DIGITAL TELEVISION SERVICE.—The term “digital television service” means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(d) of its regulations (47 C.F.R. 73.682(d)).

(54) 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.

(55) 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.

(56) 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.

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

[47 U.S.C. 225]

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

(1) COMMON CARRIER OR CARRIER.—The term “common carrier” or “carrier” includes any common carrier engaged in

interstate communication by wire or radio as defined in section 3 and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term “TDD” means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

【(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.*

(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the

area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

(d) REGULATIONS.—

(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

(3) JURISDICTIONAL SEPARATION OF COSTS.

(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) ENFORCEMENT.—

(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) CERTIFICATION.—

(1) STATE DOCUMENTATION.— Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) COMPLAINT.—

(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in

effect, the Commission shall refer such complaint to such State.

(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

**SEC. 303. POWERS AND DUTIES OF COMMISSION.**

[47 U.S.C. 303]

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

- (a) Classify radio stations;
- (b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;
- (c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;
- (d) Determine the location of classes of stations or individual stations;
- (e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;
- (f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: Provided, however, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;
- (g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;
- (h) Have authority to establish areas or zones to be served by any station;
- (i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;
- (j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;
- (k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l)(1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States; except that such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;

(2) Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this Act may be issued an operator's license to operate that station.

(3) In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) has violated, or caused, aided, or abetted the violation of, any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) false or deceptive signals or communications, or

(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interfered with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1); or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act.—The terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the pre-

scribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

(t) Notwithstanding the provisions of section 301(e), have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.

【(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 the Commission's regulations (47 CFR 79.2)) in a manner that is accessible to individuals who are blind or visually impaired; 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 subparagraph (A), (B), or (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, on its own motion or in response to a petition by a manufacturer, to waive the requirements of this subsection for any apparatus or class of apparatus—

(i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection.—The term “direct-to-home satellite services” means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

(w) [Note: This paragraph did not take effect. See section 551(e)(1) of the Telecommunications Act of 1996; 47 U.S.C. 303 note]

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).

(y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

(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) such 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 or render 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 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 appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement;

(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 visually impaired in real-time;

(3) that for such apparatus equipped with the functions described in paragraphs (1) and (2) built in access to those closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated by activating the closed captioning or accessibility features; 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 the Commission’s rules (47 CFR 76.1200).

(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 visually impaired, except that the Commission may not specify the technical standards, proto-

*cols, procedures, and other technical requirements for meeting this requirement; and*

*(2) for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.*

*With respect to apparatus features and functions delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software. With respect to apparatus features and functions delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.*

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

[47 U.S.C. 330]

(a) No person shall ship in interstate commerce, or import from any foreign country into the United States, for sale or resale to the public, apparatus described in paragraph (s) of section 303 unless it complies with rules prescribed by the Commission pursuant to the authority granted by that paragraph: Provided, That this section shall not apply to carriers transporting such apparatus without trading in it.

(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)] 303(u) and (z) 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.

(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(x) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading in it.

(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption

of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

(A) enables parents to block programming based on identifying programs without ratings,

(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings,

the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph.

(d) For the purposes of this section, and sections 303(s), 303(u), and 303(x)—

(1) The term “interstate commerce” means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

#### **SEC. 402. JUDICIAL REVIEW OF COMMISSION'S ORDERS AND DECISIONS.**

[47 U.S.C. 402]

(a) **PROCEDURE.**—Any proceeding to enjoin, set aside, annul or suspend any order of the Commission under this Act (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of title 28, United States Code.

(b) **RIGHT TO APPEAL.**—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) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

(3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is denied by the Commission.

(4) By any applicant for the permit required by section 325 of this Act whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.

(5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.

(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), (4), and (9) hereof.

(7) By any person upon whom an order to cease and desist has been served under section 312 of this Act.

(8) By any radio operator whose license has been suspended by the Commission.

(9) By any applicant for authority to provide interLATA services under section 271 of this Act whose application is denied by the Commission.

(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).*

(c) FILING NOTICE OF APPEAL; CONTENTS; JURISDICTION; TEMPORARY ORDERS.—Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application so as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restoration of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

(d) NOTICE TO INTERESTED PARTIES; FILING OF RECORD.—Upon the filing of any such notice of appeal the appellant shall, not later than five days after the filing of such notice, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same. The Commission shall file with the court the record upon which the order com-

plained of was entered, as provided in section 2112 of Title 28, United States Code.

(e) INTERVENTION.—Within thirty days after the filing of any such appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interest would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

(f) RECORDS AND BRIEFS.—The record and briefs upon which any such appeal shall be heard and determined by the court shall contain such information and material, and shall be prepared within such time and in such manner as the court may by rule prescribe.

(g) TIME OF HEARING; PROCEDURE.—The court shall hear and determine the appeal upon the record before it in the manner prescribed by section 706 of title 5, United States Code.

(h) REMAND.—In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

(i) JUDGMENT FOR COSTS.—The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

(j) FINALITY OF DECISION; REVIEW BY SUPREME COURT.—The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 1254 of title 28 of the United States Code, by the appellant, by the Commission, or by any interested party intervening in the appeal, or by certification by the court pursuant to the provisions of that section.

### SEC. 503. FORFEITURES.

[47 U.S.C. 503]

(a) REBATES AND OFFSETS.—Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the

trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b) ACTIVITIES CONSTITUTING VIOLATIONS AUTHORIZING IMPOSITION OF FORFEITURE PENALTY; AMOUNT OF PENALTY; PROCEDURES APPLICABLE; PERSONS SUBJECT TO PENALTY; LIABILITY EXEMPTION PERIOD.—

(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with.—The terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 508(a) of this Act; or

(D) violated any provision of section 1304, 1343, 1464, or 2252 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 506 of this Act.

(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$25,000 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 \$250,000 for any single act or failure to act described in paragraph (1) of this subsection.

(B) If the violator is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed \$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 described in paragraph (1) of this subsection.

(C) Notwithstanding subparagraph (A), if the violator is—

(i)(I) a broadcast station licensee or permittee; or

(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language, the amount of any forfeiture penalty determined under this subsection shall not exceed \$325,000 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 \$3,000,000 for any single act or failure to act.

(D) In any case not covered in subparagraph (A), (B), or (C), the amount of any forfeiture penalty determined under this subsection shall not exceed \$10,000 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 \$75,000 for any single act or failure to act described in paragraph (1) of this subsection.

(E) The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

*(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.*

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.



(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required, or is a cable television system operator, if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e), or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under title III of this Act and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,

whichever is earlier; or

(B) such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

For purposes of this paragraph, “date of commencement of the current term of such license” means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

**SEC. 710. TELEPHONE SERVICE FOR DISABLED.**

[47 U.S.C. 610]

(a) ESTABLISHMENT OF REGULATIONS.—The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

[(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,

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.]

*(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 communication 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) telephones used with public mobile services;
- (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) (B) [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.] *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) such revocation or limitation is in the public interest;
- (ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals;
- (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.

(3) The Commission may, upon the application of any interested person, initiate a proceeding to waive the requirements of paragraph (1)(B) of this subsection with respect to new telephones, or telephones associated with a new technology or service. The Commission shall not grant such a waiver unless the Commission determines, on the basis of evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest, and that (A) compliance with the requirements of paragraph (1)(B) is technologically infeasible, or (B) compliance with such requirements would increase the costs of the telephones, or of the technology or service, to such an extent that such telephones, technology, or service could not be successfully marketed. In any proceeding under this paragraph to grant a waiver from the requirements of paragraph (1)(B), the Commission shall consider the effect on hearing-impaired individuals of granting the waiver. The Commission shall periodically review and determine the continuing need for any waiver granted pursuant to this paragraph.

(4) For purposes of this subsection—

- (A) The term “essential telephones” means only coin-operated telephones, telephones provided for emergency use, and

other telephones frequently needed for use by persons using such hearing aids;

(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] 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

(D) The term “secure telephones” means telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications.

(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.*

(d) The Commission shall establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

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

(f) The Commission shall periodically review the regulations established pursuant to this section. Except for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section.

(g) Any common carrier or connecting carrier may provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated service reasonable and prudent costs not charged directly to users of such equipment.

[(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.**

[47 U.S.C. 613]

(a) **COMMISSION INQUIRY.**—Within 180 days after the date of enactment of the Telecommunications Act of 1996, the Federal Communications Commission shall complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) **ACCOUNTABILITY CRITERIA.**—Within 18 months after such date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

[(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 once 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 subsection (e)(1) of the Twenty-*

*First Century Communications and Video Accessibility Act of 2010, the Commission shall revise its regulations to require the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations.*

*(B) SCHEDULE.—The regulations prescribed under this paragraph shall include an appropriate schedule of deadlines 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 with captions after the effective date of such regulations would be economically burdensome to providers of video programming or program owners.*

*(D) REQUIREMENTS FOR REGULATIONS.—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 for the provider of such service, program, or equipment; and*

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

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

**(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;**

**(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of the Telecommunications Act of 1996, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and**

**[(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 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 peti-*

*tion upon a showing that the requirements contained in this section would be economically burdensome. During the pendency of such a petition, such provider or owner shall be exempt from the requirements of this section. 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.*

(e) **UNDUE BURDEN.**—The term “undue burden” means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

- (1) the nature and cost of the closed captions for the programming;
- (2) the impact on the operation of the provider or program owner;
- (3) the financial resources of the provider or program owner; and
- (4) the type of operations of the provider or program owner.

(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 (h), that 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, and 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 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.*

(G) *The Commission shall consider extending the exemptions and limitations in the reinstated regulations for technical capability reasons to all providers and owners of video programming.*

(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.*

(g) **EMERGENCY INFORMATION.**—*Not later than 1 year after the Advisory Committee report under subsection (e)(2) 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 visually impaired; 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 visually impaired.*

(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 entity 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” means programming by, or generally considered comparable to*



*programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 3).*

[(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.]

[(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 ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT.**

(a) **MANUFACTURING.**—*With respect to equipment manufactured after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, shall ensure that the equipment and software that such manufacturer designs, develops, and fabricates shall be accessible to and usable by individuals with disabilities, unless the requirement of this subsection is not achievable.*

(b) **SERVICE PROVIDERS.**—*With respect to services provided after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a provider of advanced communications services shall ensure that such services offered by such provider are accessible to and usable by individuals with disabilities, unless the requirement of this subsection is not achievable.*

(c) **COMPATIBILITY.**—*Whenever the requirements of subsections (a) or (b) are not achievable, a manufacturer or provider shall ensure*

that its equipment or service is compatible with existing 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 do not impede accessibility or usability.

(e) **REGULATIONS.**—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—

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

(2) 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;

(3) determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks;

(4) not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilitate the manufacturers' and service providers' compliance with sections (a) through (c); and

(5) not mandate the use or incorporation of specific proprietary technology.

(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, 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 technical and economic impact on the operation 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 type of operations of the manufacturer or provider.

(4) *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.**—*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—*

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

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

**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 remedial 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) *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 the 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) *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) *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 section 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) Whether, and to what extent (if any), the requirements of this section have an effect 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 en-

forcement 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. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.**

(a) **IN GENERAL.**—*Within 6 months after the date of enactment of the Equal Access to 21st Century Communications Act, 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 individuals who are deaf-blind.*

(b) **INDIVIDUALS WHO ARE DEAF-BLIND DEFINED.**—*For purposes of this subsection, the term “individuals who are deaf-blind” has the same meaning given such term in the Helen Keller National Center Act, as amended by the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)).*

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