

Summary: H.R. 3101

Twenty-first Century Communications and Video Accessibility Act of 2009

Emerging digital and Internet-based technologies can provide people with disabilities with new opportunities for greater independence, integration, and privacy, but only if these are designed to be accessible. The guiding principle of the Twenty-first Century Communications and Video Accessibility Act is to bring existing federal laws requiring communications and video programming accessibility up to date and to fill in any accessibility gaps, to ensure the full inclusion of people with disabilities in all aspects of daily living through accessible, affordable and usable communication and video programming technologies.

Title I – Communications Access

Definitions. Section 101. – Adds definitions to the Communications Act (the “Act”) as follows:

- **Disability** – This has the same meaning as in the Americans with Disabilities Act.
- **Interconnected VoIP Service** – This has the same meaning as in the FCC’s regulations.
- **Advanced Communications** – This encompasses interconnected and non-interconnected VoIP service, electronic messaging, and video conferencing.
- **Non-Interconnected VoIP Service** – This is a service that enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol (IP) or any successor protocol and requires IP-compatible customer premises equipment (“CPE”).
- **Electronic messaging** – This refers to a service that provides non-voice messages in text form between individuals over communications networks.
- **Internet Access Equipment** – This refers to equipment that is used to combine computer processing, information provision and computer interactivity with data transport, enabling users to run a variety of applications, including e-mail.
- **Internet Access Service** – This is a service that combines computer processing, information provision, and computer interactivity with data transport, enabling end users to access the Internet and use a variety of applications, including e-mail.
- **Video Conferencing** – This is a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.
- **Consumer Generated Media** – This refers to posts or content made by consumers to online sites and Internet venues, including video, audio, and multimedia content created by such consumers. Consumer generated media is generally exempt from the closed captioning and video description obligations, discussed below.

Hearing Aid Compatibility. Sec. 102. – This section extends federal law that currently requires hearing aid compatibility (HAC) on newly manufactured and imported telephones, to comparable CPE used to provide Internet-enabled voice communication service. The purpose of this section is to make sure that people with hearing loss have access to telephone devices with a built-in speaker (typically held to the ear) used with advanced technologies. (This

section is not intended to extend to headsets or headphones used with computers.). The section also amends existing law by deeming CPE compliant with the HAC obligations when it conforms to technical standards developed through a public participation process that includes people with hearing loss.

Relay Services. Sec. 103. – This section clarifies that telecommunications relay services (TRS) are intended to ensure that people who have hearing or speech disabilities can use relay services to engage in functionally equivalent telephone communication with all other people, not just people without a hearing or speech disability. It revises Section 225 of the Act, which has been interpreted by the FCC to authorize only relay services between people with disabilities and people without disabilities. This section also adds a new section to Title VII of the Act that expands the relay service obligations to all providers of interconnected and non-interconnected VoIP services.

Access to Internet-Based Services and Equipment. Sec. 104. – This adds a new section 716 to the Act to require advanced communications service providers and manufacturers to make their services and equipment accessible to and usable by people with disabilities unless doing so would result in an undue burden. This section builds upon Section 255’s existing requirement for telecommunications and interconnected VoIP service and equipment to be accessible. Where an undue burden will result under the new section, manufacturers and providers must make their advanced communications equipment and services compatible with peripheral devices or specialized CPE commonly used by people with disabilities, unless doing so would be an undue burden. Network features, functions, and capabilities must also comply with this section. The term “undue burden” has the same meaning given it in the Americans with Disabilities Act. The FCC is charged with developing implementing regulations for this section within one year after enactment of this Act.

This also adds a new section 717 that contains measures to improve the accountability and enforcement of these new disability safeguards, including reporting obligations for industry and the FCC, directives for new FCC complaint procedures, the creation of a clearinghouse of information on accessible products and services, a study on accessibility compliance by the Comptroller General, directives for enhanced outreach and education by the FCC, and clarification of FCC penalties for non-compliance. Individuals who are aggrieved do not have a direct private right of action, but may appeal a Commission decision on complaints brought under this section in federal court.

Universal Service. Sec. 105. – This section amends Section 254 of the Act to make consumers with disabilities – as a distinct group – eligible to receive universal service support through two specific measures. First, it grants the FCC authority to designate “telecommunications services, Internet access services and advanced communications” needed by people with disabilities, as services eligible to receive support under the existing Lifeline and Link-Up universal service programs. For example, deaf individuals who are otherwise eligible for Lifeline and Link-Up support could use this support to obtain broadband services needed for video communications. Second, it grants authority to the FCC to designate as eligible for universal service support, programs for the distribution of specialized equipment

used to make telecommunications, Internet access services and advanced communications accessible to individuals who are deaf-blind. Such support is capped at \$10 million per year.

Emergency Access and Real-Time Text Support. Sec. 106. – This section adds a new section 718 that directs the FCC to create an advisory committee to determine actions necessary to achieve reliable, interoperable real-time text communication so that people with disabilities can access Internet protocol-enabled emergency services. The committee will make recommendations for protocols and technical requirements for the transmission of such text, the communications devices and equipment that receive such text, and the receipt of such text by public safety answering points. The purpose of this section is to ensure that people with disabilities, especially individuals who are deaf or hard of hearing or who have a speech disability, are able to communicate with others via text in an IP environment with the same reliability and interoperability as they receive text via the public telephone network when using TTYs. The FCC has the authority to implement the advisory committee’s recommendations through the adoption of regulations, standards and protocols.

Internet Access Service Interface. Sec. 107 – This section adds a new section 719 that requires Internet access service providers and manufacturers to make their equipment and service user interfaces (including those used to initiate, monitor and control their services) accessible to people with disabilities.

Title II – Video Programming

FCC Inquiry on Closed-Captioning Decoder, Video Description Capability, User Interfaces, and Video Programming Guides and Menus. Sec. 201 — This section directs the FCC to conduct inquiries on (1) ways to transmit closed captioning and video description on video programming exhibited on new technologies, including Internet protocol and digital wireless services and equipment; (2) ways to make televised emergency information accessible to people who are blind or visually impaired; (3) ways to make user interfaces and related on-screen menus or visual indicators on video programming apparatus used for the navigation or selection of video programming accessible; and (4) ways to make video programming guides and menus accessible to people unable to read visual displays. Video description is the provision of verbal descriptions of the on-screen visual elements of a show, provided during natural pauses in dialogue. The FCC must report the results of these inquiries to Congress within 18 months of the enactment of this Act.

Closed Captioning Decoder and Video Description Capability. Sec. 202 – This section reaffirms the existing requirement (contained in the Television Decoder Circuitry Act of 1990) for every video programming apparatus that has a screen 13 inches or larger and that receives or plays back video programming to have the capability to transmit closed captioning, and expands this mandate to require that such apparatus deliver video description. This section also requires, after the inquiries in Section 201 above are completed, that video programming devices that use screens *less than 13 inches* be capable of (1) displaying closed captions, (2) transmitting and delivering video descriptions, and (3) conveying emergency information in a manner accessible to people who are blind or visually impaired. In addition, after inquiry, all apparatus designed to record video programming must enable viewers to activate and deactivate captioning and description features when these are played back on a screen of any

size. Finally, under this section, interconnection mechanisms and standards for digital video source devices must be able to carry captions and video description to end user equipment. Display-only video monitors that do not have playback capability are not covered by this section. The FCC must issue regulations to implement this section.

Note: For the purposes of this section, Section 203 (below) amends the definition of video programming to include video programming distributed over the Internet or by some other means. Accordingly, the apparatus referenced in Section 202 include any apparatus that receives, plays back, or records video programming distributed over the Internet or by some other means.

Video Description and Closed Captioning. Sec. 203. – This section reinstates the FCC’s modest regulations on video description, directing the Commission to establish a schedule of deadlines for video described programs. Those rules, originally promulgated in 2001, were struck down by a U.S. Court of Appeals for lack of FCC authority. This section also directs the FCC to promulgate additional rules to require televised emergency information to be accessible to individuals who are blind or visually impaired and authorizes the FCC to increase the amount of video description required. This section permits exemptions to the video description requirements based on showings that such requirements would be economically or unduly burdensome.

This section also amends the definition for video programming to include video programming distributed over the Internet or by some other means, to ensure the continued accessibility of video programming to Americans with disabilities as this programming migrates to the Internet. The FCC is directed to establish a schedule of deadlines for the provision of closed captioning of such Internet-based video programming.

User Interfaces Regulations. Sec. 204. – This section requires, within 12 months after the report to Congress required in section 201, regulations that require devices used to receive or display video programming, including devices used to receive and display Internet-based video programming, to be accessible by people with disabilities so that such individuals are able to access all functions of such devices (such as turning these devices on and off, controlling volume and selecting programming). The section contains requirements for (1) audio output where on-screen text menus are used to control video programming functions, and (2) accessible user controls for accessing closed captioning and video description, including a closed captioning button, key or icon on remote controls (where remote controls are provided) and first level access to captioning and description features when made available through on-screen menus.

Access Video Programming Guides and Menus. Sec. 205 – This section requires the FCC to issue regulations for video programming providers and owners and multichannel video programming distributors to make their video programming information and selection accessible to people who are unable to read the visual display, so that these individuals can make program selections in real-time.