

Before the
**ARCHITECTURAL AND TRANSPORTATION BARRIERS
COMPLIANCE BOARD**

Washington, DC 20004

In the Matter of)
)
Information and Communication Technology) 36 C.F.R. Parts 1193 and 1194
Standards and Guidelines) Docket No. ATBCB-2015-0002
) RIN 3014-AA37
)

**COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

I. INTRODUCTION

The Consumer Electronics Association (“CEA”)¹ hereby submits these comments in response to the above-captioned Notice of Proposed Rulemaking (“*Notice*”).² As the leading U.S. trade association of the consumer electronics and information technologies industries, CEA has been very involved in the implementation of U.S. laws and regulations governing the accessibility of information and communications technology (“ICT”)³ and services to people

¹ CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia, and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multinational corporations to specialty niche companies, CEA members cumulatively generate more than \$286 billion in annual factory sales and employ tens of thousands of people in the United States.

² *Information and Communication Technology Standards and Guidelines*, Notice of Proposed Rulemaking, Docket No. ATBCB-2015-0002, RIN 3014-AA37, 80 Fed. Reg. 10879 (Feb. 27, 2015) (“*Notice*”).

³ For example, CEA (i) has served on the Commission’s Consumer Advisory Committee since 2004 and now serves on the Disability Advisory Committee; (ii) is working, through its Video Systems Committee, with CE manufacturers and users with disabilities on a standard to address tactile feedback features for remote controls (CEA-2041); and (iii) is meeting regularly, through its Television Manufacturers Caucus Accessibility Working Group, to research and develop best practices, bulletins, and/or checklists regarding accessibility for television sets and related video source devices.

with disabilities, including, most recently, the Federal Communications Commission’s (“FCC’s” or “Commission’s”) efforts to implement in regulations the Twenty-First Century Communications and Video Accessibility Act (“CVAA”).⁴ CEA has also followed the activities of the Architectural and Transportation Barriers Compliance Board (“Board”) regarding ICT accessibility over the past several years.

CEA’s general view on the development of new communications technologies is that modern consumer electronics devices and applications (“apps”) help tear down accessibility barriers by providing opportunities for access to people with disabilities that the less sophisticated, less user-friendly devices and apps of even a few years ago were unable to deliver. This would be the case even without accessibility statutes and regulations. For example, CEA honors innovation in accessible technologies each year at the International Consumer Electronics Show. This year, winners showcased exciting advancements in making computer interfaces, phones, and televisions more accessible to individuals with limited dexterity, hearing, and vision, respectively.⁵ Innovative and flexible development of these devices and apps should be encouraged by policy makers as well as advocates for increased accessibility.

While CEA’s members are focused on consumer markets, and the guidelines that the Board is proposing to implement pursuant to Section 255 of the Communications Act of 1934

⁴ See, e.g., CEA Comments, CG Docket No. 10-213, WT Docket No. 96-168, CG Docket No. 10-145 (filed Feb. 13, 2012); CEA Reply Comments, CG Docket No. 10-213, WT Docket No. 96-168, CG Docket No. 10-145 (filed Mar. 14, 2012); CEA Comments on Public Notice, CG Docket No. 10-213 (filed Nov. 22, 2010); CEA Comments, CG Docket No. 10-213, WT Docket No. 96-168, CG Docket No. 10-145 (filed Apr. 25, 2011); CEA Reply Comments, CG Docket No. 10-213, WT Docket No. 96-168, CG Docket No. 10-145 (filed May 23, 2011).

⁵ See International CES, Events & Experiences, *2016 CES Innovation Awards*, <http://www.ces-web.org/Events-Programs/CES-Innovation-Awards.aspx> (last visited May 28, 2015) (Award-winning accessibility solutions are displayed by using the drop down menu located within the “Honorees” tab to navigate to “Accessible Technologies”).

(the “Act”) (“Section 255 guidelines”),⁶ CEA is well aware that the federal government is the single biggest U.S. procurer of ICT. The Board’s actions, especially in developing federal ICT standards pursuant to Section 508 of the Rehabilitation Act of 1973, as amended⁷ (“Section 508 standards”), could have profound consequences beyond the federal market. If those Section 508 standards do not recognize the need for flexibility in implementing accessibility solutions, companies may find it cost prohibitive to develop equipment and services for the federal and consumer markets, precluding exciting new innovations.⁸

CEA is concerned about what appears to be a relatively inflexible approach to Section 255 guidelines and Section 508 standards being proposed in the *Notice*. Rather than inserting itself as a regulatory body into consumer markets, particularly with respect to the Internet of Things and global industry standards, the Board should support these marketplace developments by adopting flexible Section 508 standards and Section 255 guidelines. The Board therefore should revamp the approach of the *Notice* before finalizing any standards or guidelines. The most efficient way to encourage accessible technology is to give industry the room to innovate and experiment.

⁶ 47 U.S.C. § 255.

⁷ 29 U.S.C. § 794d.

⁸ Moreover, many universities and colleges incorporate the Section 508 standards, or adopt similar policies for the procurement of accessible technology. See Diana Oblinger & Laura Ruby, *Accessible Technology: Opening Doors for Disabled Student*, BUSINESS OFFICER, Jan. 2004, available at http://www.nacubo.org/Business_Officer_Magazine/Magazine_Archives/January_2004/Accessible_Technology_Opening_Doors_for_Disabled_Students.html (“Some [schools], like UT-Austin and UW-Madison, have chosen to incorporate Section 508 in their accessibility policies, along with other guidelines, such as those published by the World Wide Web Consortium. Others, such as Temple University in Pennsylvania and several California State University campuses, have adopted policies with guidelines similar to Section 508 regulations.”).

The Board should be careful not to upset global trends towards accessibility in the broader consumer market by mandating strict technical standards that are out of step with technology trends and industry standards.

II. THE BOARD'S SECTION 255 GUIDELINES SHOULD REFLECT THE BOARD'S LIMITED STATUTORY AUTHORITY AND BE CONSISTENT WITH THE CVAA RULES

A. THE BOARD'S STATUTORY MANDATE UNDER SECTION 255 IS LIMITED

CEA understands the Board's desire to unify the Section 508 standards and Section 255 guidelines.⁹ However, doing so cannot trump the Board's statutory authority. The common structure proposed in the *Notice*, while well-intentioned, attempts to impose regulatory requirements for equipment and services that are well outside the Board's authority to adopt guidelines, not binding regulations, regarding Section 255.

The Board is charged with developing **guidelines for telecommunications and customer premises equipment ("CPE")**, exclusively.¹⁰ The scoping requirements exceed this mandate by **mandating** all ICT must be accessible¹¹ and then introducing a few hardware exceptions to recognize that some devices are mobile and do not issue keys, tickets or fare cards.¹² Such an approach disregards Congress's statutory directive for the Board to develop

⁹ See *Notice*, 80 Fed. Reg. at 10914 ("A major objective of this rulemaking is to harmonize the 255 Guidelines and 508 standards.").

¹⁰ 47 U.S.C. § 255(e).

¹¹ *Notice*, 80 Fed. Reg. at 10944 ("**C201.3 Access to Functionality.** Telecommunications equipment manufacturers shall ensure that ICT is accessible to and usable by individuals with disabilities by providing direct access to all functionality of ICT. Where telecommunications equipment manufacturers can demonstrate that it is not readily achievable for ICT to provide direct access to all functionality, ICT shall support the use of assistive technology and specialized customer premises equipment where readily achievable.").

¹² *Id.* ("**C204.1 General.** Where components of ICT are hardware, and transmit information or have a user interface, those components shall conform to applicable requirements in Chapter 4.

guidelines, that is, to be an advisor to industry and the FCC. The Board acknowledges the Commission’s role in the introductory sections of the *Notice*, but then exceeds its acknowledged authority in the proposed rules.¹³

The Board should also adjust its Section 255 guidelines to reflect its limited statutory role and narrow the scope of the Guidelines to apply to telecommunications and CPE exclusively. That is, the Board should explicitly limit the scope of its Section 255 guidelines to (1) telecommunications equipment and CPE and (2) software that is “integral” to the equipment itself.¹⁴ Properly limited, the Section 255 guidelines would **not**, for example, apply to third party apps on a mobile device if the apps are not necessary to telecommunications functions of the device. This is an important limit, especially because the scope of equipment covered by Section 255 changes over time.¹⁵

“EXCEPTION: Components of ICT shall not be required to conform to 402, 407.11, 407.12, 408, and 409.”).

¹³ Compare *Notice*, 80 Fed. Reg. at 10881 (“Under Section 255, the Access Board is required to develop guidelines for the accessibility of telecommunications equipment and customer premises equipment in conjunction with the FCC and to review and update the guidelines periodically. The FCC is responsible for enforcing Section 255 and issuing implementing regulations; it is not bound to adopt the Access Board’s guidelines as its own or to use them as minimum requirements.”) with *Notice*, 80 Fed. Reg. at 10944 (“**C.201.1 Scope.** Manufacturers of telecommunications equipment *shall* comply with the requirements in the 255 Guidelines applicable to such equipment when newly released, upgraded, or substantially changed from an earlier version or model. Manufacturers of telecommunications equipment *shall* also conform to the requirements in the 255 Guidelines for software, content, and support documentation and services where associated with the use of such equipment.”) (emphasis added).

¹⁴ 47 U.S.C. § 153(52) (“The term ‘telecommunications equipment’ means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)”; 47 U.S.C. § 153(16) (“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 See, e.g., *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (rel. Mar. 12, 2015) (reclassifying Broadband Internet Access Service as a telecommunications service).

B. THE CVAA RULES REFLECT CONGRESS'S INTENT TO CREATE A BALANCED APPROACH TOWARDS INCREASING ACCESSIBILITY AND INNOVATION

Congress's most recent efforts to guide the development of accessibility solutions in communications technology are in the CVAA, which the President signed into law in October 2010. CEA proudly helped shape a law – the CVAA – that reflects Congress's careful approach toward balancing the twin goals of accessibility and preserving technological innovation. The FCC, industry, and consumer groups have worked hard to implement the CVAA regime, and the Board should tread lightly to avoid upsetting the balance set by Congress and then implemented by the FCC.¹⁶ Congress explicitly prohibited the Commission from adopting technical standards, except for safe harbor purposes, while allowing for industry flexibility.¹⁷ The CVAA is the latest word from Congress on accessibility and the Board should strive to replicate Congress's balance.

As with Section 255, in implementing the CVAA, the FCC has taken a descriptive approach to mandating accessibility goals, letting industry decide exactly how to implement accessibility in ways that conform to device form and function.¹⁸ For example, in implementing Section 716 of the Act, added by the CVAA, the Commission requires manufacturers and service providers to provide at least one mode that does not require user speech, if doing so is

¹⁶ See, e.g., FCC, FCC Encyclopedia, *Twenty-First Century Communications and Video Accessibility Act*, <https://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0> (last visited May 28, 2015) (listing dozens of public notices, reports, proposed rules, and orders related to implementing the CVAA as well as materials related to the Video Programming Accessibility Advisory Committee and Emergency Access Advisory Committee, two Federal Advisory Committee Act committees authorized by the CVAA).

¹⁷ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 at 2755-57 (2010) (as codified in various sections of Title 47 of the United States Code).

¹⁸ See 47 C.F.R. § 14.21(b).

achievable, but it does not dictate to covered entities on how precisely to implement that requirement.¹⁹

The Board should follow this approach and avoid being prescriptive in either the Section 508 standards or the Section 255 guidelines. Thus, the Board should avoid mandating specific technical standards,²⁰ Application Programming Interfaces (“APIs”),²¹ or other restrictive solutions that dictate the methods of achieving accessibility. Rather, it should provide examples of how to implement modern accessibility solutions. In this respect, the current Appendix to Part 1193 – Advisory Guidance has been an enormously helpful resource for CEA’s members seeking to build accessibility into their products and services.²² Thus, the Board should not mandate the use of WCAG 2.0, which has been a very useful voluntary standard for web pages and apps, but should present it in the Section 255 guidelines as an example accessibility solution.²³

Generally speaking, like the *Section 255 Order*,²⁴ the *ACS Order*,²⁵ which established rules for implementing Sections 716 and 717 of the Act, and the *Section 718 Order*,²⁶ which

¹⁹ 47 C.F.R. § 14.21(b)(1)(ix).

²⁰ *See generally Notice*, 80 Fed. Reg. at 10944-48 Proposed Chapters 4-6.

²¹ *Id.* at 10925 (despite widespread industry use of such APIs, the Board determined it must “expressly require APIs”).

²² 36 C.F.R. § 1193 Appendix (offering strategies the industry may use to achieve accessible ICT).

²³ *See* W3C, Web Content Accessibility Guidelines (WCAG) 2.0 (Dec. 11, 2008), <http://www.w3.org/TR/WCAG20> (providing “Layers of Guidance” for making “Web content more accessible to people with disabilities”).

²⁴ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999).

²⁵ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011).

established rules for implementing Section 718 of the Act, recognize the need to balance the CVAA's dual goals of accessibility and preserving innovation. The Board should not dismiss the Commission's warning that prescribing specific standards "potentially stifle[s] innovative approaches," but the Board appears to do just that for video programming and user controls.²⁷

III. THE BOARD'S ACTIONS SHOULD ENCOURAGE BROADER INNOVATION AND FLEXIBILITY, WHICH HELP DEFINE MARKETPLACE TRENDS TOWARDS ACCESSIBILITY

The Internet of Things is emerging and bringing devices online that would never have been considered ICT in the past.²⁸ Lights, locks, and refrigerators are coming online through simple, low-powered chips and screens attached to base equipment. These simple chips are often designed to transmit limited information to and from a more powerful device; they are not necessarily designed to replicate a full computing experience on a previously "dumb" device. Not only is the trend towards smaller ICT generally, but the Internet of Things depends on minimization in power, function, and size.²⁹ Many emerging devices specialize in just a few functions. Such exciting advancements should be treated differently from a fully functional desktop, for example.

²⁶ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Second Report and Order, 28 FCC Rcd 5957 (2013).

²⁷ *Notice*, 80 Fed. Reg. at 10923.

²⁸ *See, e.g.*, Grace Dobush, *Internet of Things: 13 Innovations for a Smarter Kitchen*, CEA Blog (Apr. 29, 2015), <https://www.ce.org/Blog/Articles/2015/April/Internet-of-Things-13-Innovations-for-a-Smarter-Ki>.

²⁹ *See, e.g.*, Brian Markwalter, *Sensing Change*, i³ (May 22, 2014), <http://www.ce.org/i3/Innovate/-2014/May-June/Sensing-Change.aspx> ("In the sensory swarm concept, ultra low-power sensor processor radio units will make up the intelligent environment that surrounds us, sensing and reporting on everything from traffic to trash pickup.").

The Board could help provide accessibility guidance to manufacturers by at least recognizing the development of the Internet of Things and avoiding rigid requirements that could thwart its evolution. The Section 508 standards, in particular, appear to assume standalone, computationally powerful systems with relatively large screens. For example, although the Board recognizes that mobile devices do not have large screens, it explicitly abandons any minimum screen size threshold for other requirements such as Closed Captioning.³⁰ The Board is risking imposing obligations that would hinder development and deployment of new, innovative, consumer-friendly services that come in the form of single or few-function devices.

The Board's standards and guidelines should do more to recognize and encourage global, industry-led technical standards. Harmonizing international technical standards has led to cost efficiencies that can then be invested in further functionality, such as developing solutions that are even more accessible.³¹ Voluntary, industry-driven standards are used throughout ICT to enable efficient production and interoperability. CEA itself supports a number of programs for the industry that use self-certification and product marks to convey useful information to consumers. These certifications help to identify products that meet certain performance levels while providing consumers with assurances that the products meet industry standards.

Although the Board recognizes that such standards enable accessibility in Europe, for example, the Board does not follow through on such recognition but instead proposes to mandate

³⁰ Compare *Notice*, 80 Fed. Reg. at 10923 (proposing an exception to the User Controls for Captions and Audio Description “in recognition of the fact that the small size of most mobile devices would make compliance particularly challenging”) with *Notice*, 80 Fed. Reg. at 10922.

³¹ See, e.g., *Notice*, 80 Fed. Reg. at 10883 (“American companies that manufacture telecommunications equipment and ICT-related products would likely derive significant benefits from the harmonized accessibility standards.”).

a number of unique technical requirements.³² CEA’s members may be forced to expend significant resources to develop new standards or heavily modify existing standards. This needlessly raises compliance costs while not producing measurable benefits.

IV. CONCLUSION

CEA and its members recognize and support improved access to consumer electronics for people with disabilities and view the Board’s standards and guidelines as an opportunity for such improvement. The Board should revamp the approach it takes in the *Notice*, rather than adopting its proposals. With a careful, flexible approach, the Board’s standards and guidelines will be able to serve as well as the existing guidelines have.

Respectfully Submitted,
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³² See, e.g., *Notice*, 80 Fed. Reg. at 10915 (mandating that at least one change displayed on a screen “shall be in sans serif font” and where the ICT does not provide “a screen enlargement feature, characters shall be 3/16 inch (4.8 mm) high minimum based on the upper case letter “I”); *id.* at 10945 (“Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable.”); *id.* at 10946 (mandating RFC 4103 exclusively for the transmission of real-time text using Session Initiation Protocol).