

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

June 8, 2010

To: Members and Staff of the Subcommittee on Communications, Technology, and the Internet

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on H.R. 3101, the 21st Century Communications and Video Accessibility Act of 2009.

The Subcommittee on Communications, Technology, and the Internet will hold a legislative hearing on H.R. 3101, the 21st Century Communications and Video Accessibility Act of 2009, on Thursday, June 10, 2010, at 10:00 a.m. in room 2123 of the Rayburn House Office Building.

I. BACKGROUND

The 21st Century Communications and Video Accessibility Act of 2009 would update the communications laws to help ensure that individuals with vision, hearing, and other disabilities are able to utilize fully broadband services and equipment and better access video programming devices.

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 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 an increasingly diverse menu of applications and services. Blackberries, global positioning systems (GPS), and video conferencing are but a few of the many technologies that Americans rely on daily. The extraordinary benefits of many of these technologies, however, are not currently accessible to individuals with disabilities.

A. Disabled Americans

Various studies have found that people with disabilities suffer disproportionately higher rates of unemployment and poverty than those who are not disabled. For instance, in 2008, only 40% of working-age people with disabilities were employed, while almost 80% of those without disabilities were working.¹ If certain current and emerging technologies are not designed to be accessible to the disabled community, this deep economic divide may only grow larger.

Similarly, if nothing is done to update current laws, an even greater proportion of aging Americans will be left behind. The number of people over 65 living in the United States is approximately 40 million, or 13% of the total population. One estimate shows that by 2050, that number is expected to increase to 88.5 million, or an estimated 20% of the population.² Naturally, this growth will be accompanied by a jump in the number of Americans with vision, hearing, cognitive and mobility disabilities who will need accessible communications products and services.

Disabilities access disproportionately affects American service members returning from Iraq and Afghanistan. Current studies indicate that 13% of combat troops wounded in hostile operations sustain penetrating eye trauma resulting in some vision impairment. Additionally, between 12% and 20% of veterans have experienced traumatic brain injury (TBI), and 64% of service members who suffer TBI test positive for visual dysfunction.³ Finally, 58,000 veterans have reported ringing in their ears after returning from deployment to Iraq or Afghanistan, and the Department of Veterans Affairs reports that hearing loss will affect 800,000 veterans by 2011.⁴

B. Current Statutory and Regulatory Structure

The statutes and regulations that govern access to communications and video programming for persons with disabilities were enacted when voice communications were transmitted via traditional telephone lines and television was broadcast using analog signals. Since that time, broadband networks have emerged as the dominant mode of communication and digital technologies dominate media. In light of this transition to broadband and digital media, the National Broadband Plan recommends that the Department of Justice “amend its regulations to clarify the obligations of commercial establishments” under the Americans with Disabilities

¹ 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/>).

² 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).

³ Geoffrey Ling et al., *Explosive Blast Neurotrauma*, *Journal of Neurotrauma*. (June 2009, 26(6): 815-82).

⁴ Army Times, *War is Hell – On Your Hearing*, (April 24, 2010) (online at www.armytimes.com/news/2010/04/offduty_hearing_042310w/).

Act “with respect to commercial websites.”⁵ The most important statutes and regulations that address communications accessibility for persons with disabilities are described in Attachment A.

II. SECTION-BY-SECTION ANALYSIS: H.R. 3101, THE 21ST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2009

A. Title I – Communications Access.

Section 101. Definitions. Section 101 contains definitions, including “advanced communications” and “Internet access service” that include makers of equipment that enables Internet access, as well as to providers of Voice over Internet Protocol (VoIP) services, electronic messaging services, video conferencing services, and Internet access services.

Section 102. Hearing Aid Compatibility. Requires that all equipment that enables voice communications be compatible with hearing aids.

Section 103. Relay Services. Requires providers of VoIP-based services to contribute to the Telecommunications Relay Services Fund.

Section 104. Access to Internet-Based Services and Equipment. Requires makers of Internet access equipment, including hardware and software makers, to ensure that their products are accessible, unless so doing would result in an undue burden. This provision also requires providers of advanced communications to ensure that their services are accessible, unless doing so would result in an undue burden. Section 104 also permits the FCC to enforce the obligations contained in this Act, and requires that entities covered by H.R. 3101 make periodic reports to the FCC concerning their accessibility programs and efforts. Finally, Section 104 requires the FCC to establish a clearinghouse of information on accessible products and services.

Section 105. Universal Service. Expands the ability of disabled individuals to access Federal subsidies for advanced communications services and specialized equipment.

Section 106. Emergency Access and Real-Time Text Support. Establishes an advisory committee to examine issues related to access to emergency services and so-called “real-time text” services by the disabled.

Section 107. Internet Access Service Interface. Requires providers of Internet access services or makers of Internet access equipment to make the user interfaces for such products accessible, unless so doing would be an undue burden.

B. Title II - Video Programming.

⁵ Federal Communications Commission, *National Broadband Plan*, (2010) Recommendation 9.10.

Section 201. Commission Inquiry on Closed Captioning Decoder and Video Description Capability, User Interfaces, and Video Programming Guides and Menus. Requires the FCC to conduct inquiries and issue reports to Congress regarding closed captioning and video description of programming, on user interfaces in equipment designed to display video programming, and on video programming guides and menus.⁶

Section 202. Closed Captioning Decoder and Video Description Capability. Requires the FCC to issue regulations to ensure that equipment used to view video programming, including devices with small screens, be capable of displaying closed captioning, passing through video description services, and convey emergency information.

Section 203. Video Description and Closed Captioning. Reinstates the FCC's video description rules that were vacated by the D.C. Circuit Court of Appeals in 2002, and grants the FCC continuing legal authority to issue related regulations. Requires the FCC to issue regulations to mandate the provision of closed captioning with video programming distributed over the Internet, and that video programming providers be able to convey emergency information in a manner that is accessible to individuals who are visually impaired.

Section 204. User Interface Regulations. Requires that user interfaces for equipment used to view video programming be accessible, and requires that remote controls for such devices have a button or key dedicated to accessibility features.

III. WITNESSES

The following witnesses have been invited to testify:

Sergeant Major Jesse R. Acosta, US Army (Retired)
American Council of the Blind

Mr. James Assey
Executive Vice President
National Cable and Telecommunications Association

Mr. Bobby Franklin
Executive Vice President
CTIA - The Wireless Association

Ms. Lise Hamlin
Director of Public Policy
Hearing Loss Association of America

Mr. Walter McCormick

⁶ 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 vision-impaired individuals.

President and CEO
United States Telecom Association

Mr. Gary Shapiro
President and CEO
Consumer Electronics Association

ATTACHMENT A: Statutory Provisions

- **Rehabilitation Act of 1973.** P.L. 93-112. Video Receivers and Playback Devices. Requires the implementation of accessible controls in information and electronic technologies, including video equipment, purchased or used by the federal government. 29 U.S.C. 794(d).
- **Hearing Aid Compatibility Act of 1988.** P.L. 100-394. Hearing Aid Compatible (HAC) Telephones. Requires that all telephones manufactured or imported for use in the United States after August 1989, and all “essential” telephones, be hearing aid-compatible. 47 U.S.C. 610.
- **Americans with Disabilities Act of 1990.** P.L. 101-336. Addressed the following issues:
 - *Telecommunications Relay Services.* Requires common carriers to provide telecommunications relay services (TRS) nationwide. 47 U.S.C. 225.
 - *Emergency Services.* Requires direct TTY (teletypewriter) access to Public Safety Answering Points (PSAPs). 42 U.S.C. 12134.
- **Television Decoder Circuitry Act of 1990.** P.L. 101-431. Closed captioning. Requires that television receivers with picture screens 13 inches or larger contain built-in decoder circuitry designed to display closed captioned television transmissions. 47 U.S.C. §§ 303(u) and 330(b).
- **The Telecommunications Act of 1996.** (P.L. 104-104). Amended the Communications Act of 1934 to do the following:
 - *Closed Captioning.* Requires that video programming distributors provide closed captioning on 100% of new, nonexempt English video programming. 47 U.S.C. 613.
 - *Telecommunications Equipment and Services.* Requires that telecommunications providers and manufacturers of telecommunications equipment make their services and equipment accessible to and usable by people with disabilities, if doing so is readily achievable. 47 U.S.C. § 255.
 - *Video Description.* Require the FCC to issue a report on video description technology. 47 U.S.C. 613.