

**Testimony of
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before the
House Committee on Energy and Commerce
Subcommittee on Communications, Technology and the Internet
“The Twenty-First Century Communications and Video Accessibility Act of 2009”
June 10, 2010**

Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss modernizing the laws providing accessibility to communications for disabled Americans by covering new and developing Internet Protocol-based and video programming technologies.

I am Walter McCormick, President and CEO of the USTelecom Association. USTelecom represents innovative companies ranging from some of the smallest rural telecoms in the nation to some of the largest companies in the U.S. economy. Our members offer a wide range of services across the communications landscape, including voice, video, and data over local exchange, long distance, Internet, and cable networks. What unites our diverse membership is our shared determination to deliver those services to all Americans — a commitment we know this Subcommittee shares.

Our industry has a long history of supporting communications access for people with disabilities. In fact, it reaches back to the very foundations of our business. People often forget that Dr. Alexander Graham Bell was himself a teacher of the deaf and that Bell’s invention of the telephone in 1876 grew out of his efforts to devise a hearing assistance device. The primary financial backers of Bell’s electrical experiments were the grateful parents of some of his students.

But our industry’s commitment to the disabilities community did not stop there. Bell Labs and Western Electric were pioneers in the development of the first hearing aids and artificial larynxes. We later participated in the establishment and deployment of telecommunications relay services. Both AT&T and Verizon offer mobile devices that not only provide text-to-speech access to phone features, but to web pages as well. Many of our members provide specialized offerings, such as free directory assistance, or text- and data-only plans, so that people who are deaf or have hearing loss will not pay for voice communications services they are unable to use.

Our commitment to bringing the benefits of telecommunications to all Americans, including those with disabilities, is also mirrored by our work in the legislative arena. As we approach the 20th anniversary of the Americans with Disabilities Act this July, I would note that one of the first completed, and least controversial, sections of that landmark legislation was Title

IV, which mandated the establishment of a nationwide telecommunications relay service by 1993. In 1994 and 1995 we continued our efforts in this area, working with the disabilities community to develop and support what is now section 255 of the Communications Act. That section requires providers to ensure that telecommunications services and equipment are accessible to and usable by people with disabilities.

In 2008, Mr. Chairman, your colleague from Massachusetts, Representative Ed Markey, raised the question of whether it was time to update section 255 of the Communications Act to reflect the reality of our industry's shift to IP-based communications and the advent of new video programming technologies. Representative Markey encouraged us to work with the disabilities community and taking a page from the history of section 255's development, we entered into a series of discussions with the disabilities community, represented by the Coalition of Organizations for Accessible Technology (COAT).

Our discussions with COAT would take over 15 months and more than 40 legislative drafts to complete. While time consuming, these discussions were also illuminating. We were able to identify more precisely the needs of the disabilities community and to target the bill to address those needs. We also gained an understanding of their frustrations with how the current processes and procedures at the Federal Communications Commission work to delay and inhibit their ability to bridge the communications gap for their members. Apart from technical fixes to address minor inadvertent omissions from the introduced bill, our joint work with COAT is fully reflected in H.R. 3101, the 21st Century Communications and Video Accessibility Act, which Representative Markey introduced in June of 2009.

In general, H.R. 3101 is designed to extend disability access provisions applicable to legacy telecommunications and video services to IP-enabled services and equipment and to new video programming technologies. The legislation also acknowledges that section 255 of the Act, with its limitation to telecommunications services and equipment, does not encompass many of the services that people routinely use today. Thus, the bill appropriately places the treatment of advanced communications for these purposes under Title VII of the Communications Act.

Among the bill's most helpful additions to current law are enforcement procedures that will put remedies for noncompliance on a fast track, something sorely lacking today; Lifeline and Linkup support for Internet access services and advanced communications for those who meet those programs' eligibility requirements; and the establishment of an Advisory Committee on Emergency Access and Real Time Text to provide recommendations to the FCC and to the House and Senate Commerce Committees regarding the actions necessary to ensure interoperable real time text communications as part of the migration to a national IP-enabled network, a critical public safety need for disabled Americans in the 21st century.

The legislation would also achieve what the FCC was unable to do in 2000: ensure that video description capability is made widely available, not just for television broadcasts, but also for certain video programming distributed over the Internet, the place where more and more Americans are watching video today. Methods to improve the conveyance of emergency

information by means of video will also be required under H.R. 3101, and closed captioning will be similarly advanced to include Internet distribution. Equipment that receives and plays back video programming will be required to have closed captioning, video description, and accessible emergency information capability.

The FCC's consideration and development of the National Broadband Plan in late 2009 and early 2010 gave us yet another opportunity to work with the disabilities community to ensure recognition of their needs as we enter an era in which IP-based technologies will provide the basis for most if not all electronic communication. We were particularly delighted by the inclusion of Recommendation 9.10 in the National Broadband Plan, which states that "Congress, the FCC and the Department of Justice should modernize accessibility laws, rules and related subsidy programs." The Commission adopted H.R. 3101's definition of "advanced communications," which was developed as a result of the joint USTelecom/COAT discussions. We are also pleased the Commission has already begun to implement Recommendation 9.9 to establish an Accessibility and Innovation Forum, the first meeting of which is scheduled in July. We believe our experience working closely with COAT, replicated on a broader scale and on a more systematic basis, will hasten the advancement of broadband accessibility.

We also appreciate Senator Pryor's introduction earlier this month of S. 3304, the "Equal Access to 21st Century Communications Act," and its co-sponsorship by Senators Kerry, Dorgan and Conrad. It is the next important step in the process of updating the nation's laws governing access to advanced communications technology for people with disabilities. In our recent testimony before the Senate, we highlighted the many aspects of the bill that similarly reflect our discussions with COAT. We also highlighted two issues that give us some concern -- its achievability standard and the technological disparities the bill would create. I have attached a chart to my testimony illustrating the technological disparity issue, and how specific services would be treated under the House and Senate measures. Accessibility requirements, standards, and criteria must be applied uniformly to all advanced communications service providers and manufacturers. Moving forward, we would like to continue working with the Senate to clarify those provisions.

Prior to passage of the ADA, Americans with disabilities grew justifiably impatient with claims that making public accommodations, public transportation, and communications services and equipment accessible "just couldn't be done," or couldn't be done at reasonable cost. Over and over again, many of those claims were proven wrong. When an industry starts out with the attitude that providing accessibility is too hard, it's not surprising that not much gets done. What our industry has found in the course of the last 25 years is that both we and the disabled community benefit from the certainty and focus that a sound and sensible legal roadmap for achieving accessibility provides. We believe that with such a roadmap, talented engineers and business people across the Internet landscape will respond in good faith to the challenge.

Mr. Chairman, in closing, let me reiterate our commitment to this effort. Americans are more reliant than ever on communications devices and networks in their daily lives, but Americans with disabilities can derive particular benefits from these technologies. As these

exciting new technologies evolve, that population could become increasingly disadvantaged if they are denied access to them.

We thank you for your invitation to appear today. USTelecom and its member companies look forward to working with the Subcommittee and this Congress to achieve our shared objective of making the use of broadband as ubiquitous today as electricity, water, and telephone service. Broadband is an essential building block of every modern American community. We pledge our support for making its many opportunities accessible to all Americans. Thank you.

COMPARISON OF HOUSE AND SENATE BILLS

SERVICE OR APPLICATION	H.R. 3101	S. 3304
Advanced Communications	The term “advanced communications” means interconnected VoIP service; non-interconnected VoIP service; electronic messaging; and video conferencing.	The term “advanced communications” means devices and services that transmit a bundle of IP enabled voice, video conferencing and text communications and any application or service accessed over the Internet that provides voice, video conferencing or text communications as determined necessary by the FCC.
User Interface for Internet Access Service	Yes	Yes
Interconnected VoIP (e.g., Vonage)	Yes	Yes
Video Conferencing	Yes	Only if bundled with IP voice and IP based text communications; <i>otherwise, only if FCC finds “necessary” (e.g., Skype video conferencing)</i>
IP Based Text Messaging	Yes	Only if bundled with IP based video conferencing and IP voice; <i>otherwise, only if FCC finds “necessary” (e.g., instant messaging by MSN, Yahoo, or AOL, or IP-based text messaging such as Skype SMS)</i>
E-mail	Yes	Only if bundled with IP based video conferencing and IP voice; <i>otherwise only if FCC finds “necessary” (e.g., Gmail, Yahoo Mail, HotMail)</i>
Unbundled Non-IP Based SMS text messaging (e.g., AT&T, Verizon, Sprint)	Yes	No
Other Unbundled Voice Applications (e.g., Google Voice)	No	If the FCC determines necessary