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HEARING ON H.R. 3101,

TWENTY-FIRST CENTURY COMMUNICATIONS

AND VIDEO ACCESSIBILITY ACT OF 2009

THURSDAY, JUNE 10, 2010

House of Representatives,

Subcommittee on Communications, Technology,

and the Internet,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in Room 2123, Rayburn House Office Building, Hon. Rick Boucher [chairman of the subcommittee] presiding.

Present: Representatives Boucher, Markey, Inslee, Matsui, Castor, Stearns, Waxman [ex officio]; Shimkus, Terry, Blackburn, Griffith, and Latta.

Staff Present: Amy Levine, Counsel; Roger Sherman, Chief Counsel; Tim Powderly, Senior Counsel; Greg Guice, Counsel; Shawn Chang, Counsel; Bruce Wolpe, Senior Advisor; Sarah Fisher, Special Assistant; Laurance Frierson, Intern; Alex Reicher, Intern; Elizabeth Letter, Special Assistant; Neil Fried, Minority Counsel; Will Early, Minority Senior Policy Counselor; and Garrett Golding, Minority Legislative Assistant.

Mr. Boucher. The hearing will come to order. Good morning, everyone.

Today our subcommittee examines a measure introduced by our colleague from Massachusetts, Mr. Markey, that seeks to update the laws governing access to communications services by individuals with disabilities.

There are nearly 1 billion Americans who have profound or severe hearing loss and more than 1 million who are legally blind; 4 percent of our population has great difficulty hearing; and an additional 3 percent are visually impaired.

Moreover, as some of us might not want to admit, America is aging. There are approximately 40 million people over the age of 65 living in the United States today. That amounts to 13 percent of our national population. One estimate shows that by the year 2050, that number will more than double to 88.5 million, or an estimated one-fifth of our national population. Naturally, this growth in our aging population will be accompanied by an increase in the number of Americans who are vision- or hearing-impaired and who will need accessible communications products and services.

With the explosion in Internet-delivered content, both the variety of information and entertainment offerings and the complexity and variety of the devices that receive those services have multiplied. The challenge that we as lawmakers have is to assure that all Americans can benefit from these advances,

including individuals with vision or hearing impairments. We will learn this morning about the steps that industry is already taking to make services and devices accessible by the vision- or hearing-impaired.

For example, my iPhone can be made accessible to the visually impaired, straight out of the box with the touch of an existing button. With the rapid growth of smartphones, an increasing number of Americans can download inexpensive third-party applications that perform functions like text-to-speech and speech-to-text.

In the video programming arena, an increasing amount of video content is now available on the Internet in a closed-captioned format, including the video programming of Disney, CBS, noncommercial station WGBH, and videos on YouTube. CBS offers video description of its television programming, notwithstanding the absence of any legal requirement that it do so.

These industry steps clearly mark progress. The question now is what requirements government should consider imposing that will move beyond encouraging the voluntary actions that industry has already taken so as to ensure that an even greater range of services and devices are broadly accessible to people with disabilities.

This year marks the 20th anniversary of enactment of the Americans With Disabilities Act. We have come a long way in the two decades since 1990, but we can go further, both in terms of

voluntary steps by industry and in terms of targeted regulation to ensure the accessibility of technology for persons with disabilities.

H.R. 3101, authored by Mr. Markey, provides an outstanding starting point for that consideration.

I appreciate that all of the stakeholders at the witness table today, although none are at the witness table at the moment, but all who will be at the witness table shortly have been engaging with us on a bipartisan basis in order to reach consensus on revisions to H.R. 3101, and I look forward to our continued work together.

I would also note that, on a bipartisan basis on the subcommittee member level and staff level, we are engaged with the interested stakeholders in that collaborative process, and I look forward to a successful conclusion of our work.

I want to thank our witnesses for their attendance today. And I also want to thank Sergeant Major Acosta for his service and sacrifice to our country.

That concludes my opening statement, and I am pleased now to recognize the ranking Republican member of our subcommittee, the gentleman from Florida, Mr. Stearns.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Stearns. Good morning. And thank you, Mr. Chairman. And I am very pleased that we are having this hearing today.

As we discuss many times in this subcommittee, the Internet and new technologies have transformed the way we all live and we work. Geographic boundaries no longer exist. For example, you could download a movie from another country -- legally, of course -- sitting on a beach in Florida, while participating in a video conference in Washington, D.C. All of this has been made possible because Congress has let the marketplace flourish by allowing consumers to decide what technologies will work for them.

However, as the technological revolution speeds along, it is important to ensure that people with disabilities are not left behind. All people should be afforded the opportunity to use and enjoy the amazing technology that is available. We can all agree on that point.

The question then is, What is the best way to achieve this goal? Do we need more government regulation? Or do we need to allow the markets to work with as light a regulatory touch as possible? These are the questions that we need to explore during today's hearing, and I look forward to hearing answers to these questions.

Under the Communications Act, manufacturers and carriers are already required to make telecommunication devices and services accessible to people with disabilities when doing so is readily

achievable. The statute also requires telephones to be hearing-aid compatible, requires telecommunication providers to help pay for operators that relay phone conversations between people with hearing or speech disability and people without disability, and requires television programming to be closed captioned.

Nevertheless, we are becoming victims of our own success. Due to the success of our deregulatory policies, many new technologies have evolved, and they do not fall within the existing statutory language. This hearing will investigate whether H.R. 3101 strikes the right balance of extending the benefits of technology to people with disabilities without restricting innovation.

One of the provisions in H.R. 3101 requires closed captioning of all digital video, including HD. Sometimes HD is transmitted between a set-top box and a television using an HDMI port. Unfortunately, this port is not configured to allow for closed captioning pass-through. There are a variety of ways to accomplish closed captioning; therefore, it is important that the legislation permit some ports that do not pass through closed captioning, so long as captioning can be delivered to the TV via an alternative port or rendered in the set-top box.

It is also important to clarify who is responsible for the set-top box display. Manufacturers build the set-top box hardware and carriers build the software. This distinction should be

addressed in the legislation in order to clarify which entity is responsible for which features.

In many areas, industry is already taking the necessary steps to make certain that their products and their applications are accessible to all people. The iPad, for example, has been lauded as revolutionary not just by the general public, but also by accessibility advocates, because it includes breakthrough accessibility features. This suggests that the broader market could be providing better access to people with disabilities than it does today.

Conversely, Apple and others argue that if the iPad had been subject to detailed mandates from Congress such as requirements regarding the design of the raised buttons, the flat-screen device might not have made it to the market. They argue that the right approach is perhaps to establish accessibility goals, but not dictate how to accomplish them. We need to allow innovation to continue to flourish.

The goals of H.R. 3101 are certainly laudable, and we can all agree on the final destination: Ensure that all people are able to take advantage of the remarkable technology that is available. Will this legislation take us there? Are there changes we might make that would better support accessibility goals and our goals of promoting innovation?

An earlier discussion draft of this legislation benefited greatly from conversations between the wireline phone industry and

accessibility groups. Those discussions led to changes supported by all sides which are reflected in the current draft. My hope, Mr. Chairman, is that ongoing discussions with other segments of the communications industry will result in similar improvements. So I hope this hearing will shed some light on these questions and offer up some solutions as well.

Thank you, Mr. Chairman, for this hearing. And I look forward to our witnesses.

Mr. Boucher. Thank you very much, Mr. Stearns.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Boucher. The author of the legislation before us today, the gentleman from Massachusetts, Mr. Markey, previous chairman of this subcommittee, is recognized for 2 minutes.

Mr. Markey. Thank you, Mr. Chairman, very much.

We can't have a more important hearing. We welcome back to the subcommittee Sergeant Major Jesse Acosta, who testified back in May of 2008. We thank you, sir, for your service to our country.

I think many of our brave men and women in uniform, such as Sergeant Major Acosta, return from Iraq and Afghanistan with injuries that impair their vision and their hearing, and this gives us a great opportunity to help them to be full participants in our great American economic and social and cultural heritage.

This legislation is something that will update laws of the 1990s that really did transform the relationship between people with disabilities and these technologies. Increasingly, this digital skill set is the passport to full participation in our society. And it is happening. It is happening in the marketplace, just not as rapidly as we would like to. The iPad, for example, has the capacity for people who need to be able to listen, because they are not able to read, as clearly as those who are more blessed. And if we press the dial, let's see here.

Wouldn't it be great if, for a very inexpensive, very small amount of money that not just the iPad, but every device, made it

possible for people to read or hear Bob Ryan's column in the Boston Globe today about how Ray Allen is going to shake out of his slump from Tuesday night's game and hit all of his 3s tonight against the Lakers? Well, that is what the iPad makes possible, but people shouldn't have to pay hundreds of thousands of dollars in order to access this information. We should make it a generic standard technology for all of the devices that we have in our country so that everyone is able to be able to participate in this great information revolution that we have in our country.

Mr. Chairman, thank you so much for this hearing. This is about as great a gift as we are going to be able to give to tens of millions of people in our country as this Congress will provide us. Thank you.

Mr. Boucher. Thank you very much, Mr. Markey.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Boucher. The gentlelady from Tennessee, Mrs. Blackburn, is recognized for 2 minutes.

Mrs. Blackburn. Thank you, Mr. Chairman. Thank you for the hearing. And I want to say welcome to all of our witnesses who are here today and to all of our guests. As we are approaching this 20th anniversary of the Americans With Disabilities Act, I am pleased that we are taking the issue up and are going to spend some time on it.

I think we all agree that e-commerce is thriving. As our ranking member said, we have taken a hands-off approach to the Internet, and I think it is going to be important that we strike the proper balance of making the Internet and all mediums of communication accessible to the disabled without stifling innovation or imposing undue technological burdens on the companies who actually are doing the innovation and creating the software and the technology that we are not only enjoying but that we all come to rely on more and more every day.

And as we move forward at what is appearing to be a very aggressive pace, my hope is that we are going to slow this down enough to get it right and get this legislation right. It is unfortunate that time and again we pass bills and then we come back and we tweak bills. I hope that we are going to slow down and do this right. If we fail to get the proper balance between accessibility and encouraging innovation, then we know that we are

going to have unforeseen and unintended consequences that we will be back dealing with. It is too important an issue to do that.

I welcome you all. Mr. Chairman, I thank you. And I yield back.

Mr. Boucher. Thank you, Mrs. Blackburn.

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Mr. Boucher. The chairman of the full Energy and Commerce Committee, the gentleman from California, Mr. Waxman, is recognized for 5 minutes.

The Chairman. Thank you very much, Mr. Chairman.

Today marks the first step in the process to ensure that Americans with disabilities can more fully participate in our evolving Internet-based society. We will do so by updating the laws concerning access by persons with disabilities to communications services and to video programming. The last update of these laws occurred in 1996 when most phone calls were made over a copper line and when TV signals were broadcast in analog.

As members of this committee, we are acutely aware dramatic changes have occurred since 1996. We need to bring, at long last, our fellow Americans with disabilities across the digital divide. I am pleased that Ranking Member Barton, Subcommittee Chairman Boucher, and Ranking Member Stearns share my commitment to moving legislation that addresses these issues on a bipartisan consensus basis, and committee staff has been working together to achieve that goal.

Ideally we would have a bipartisan bill on the House floor during the week of July 26. That week marks the 20th anniversary of the enactment of the landmark Americans With Disabilities Act. I can think of no better way to mark that anniversary than by bringing to the House floor bipartisan legislation that increases

access to digital communications and media for those with disabilities.

With that in mind, today I want this hearing to outline and clarify where agreement exists on the provisions contained in H.R. 3101 and where some adjustment may be necessary. And in doing this, I want to pay tribute to the work of our colleague, Congressman Markey, who introduced legislation and has been the pioneer in pushing this issue.

Our intent is to encourage industry and other stakeholders towards consensus quickly. I am aware that some industry participants and associations have not fully engaged in the discussions to date or have been unable to come up with a position on this matter. I urge these companies and associations to engage immediately on the pending legislation.

There are many success stories concerning the development of accessible technologies absent a legislative mandate. For example, Apple makes many of its products accessible. And when the D.C. Circuit threw out the FCC's first set of video description rules, CBS did not stop making that service available -- and continues to do so today.

These initiatives are to be applauded, but more can and should be done. Just as accessibility is designed into new buildings, the same should be true with regard to communications services and devices. Ultimately our goal is to find a legislative solution that meets the needs of the disabled

community and gives industry the flexibility and incentives that it needs to move forward successfully. We can take the benefits of laws for disabled Americans, put them together with the best initiatives from the private sector, and pass legislation that brings 21st century communications and media technology to Americans with disabilities.

I want to thank Mr. Markey for introducing this important legislation, Mr. Boucher for scheduling this timely hearing, and all my colleagues for their willingness to work together to pass a law and to meet this momentous occasion. Thank you, Mr. Chairman.

Mr. Boucher. Thank you very much, Chairman Waxman.

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Mr. Boucher. The gentleman from Alabama, Mr. Griffith, is recognized for 2 minutes.

Mr. Griffith. I would like to thank the chairman and ranking member and chairman for calling this hearing today, and to thank all the witnesses that will appear here to testify before this committee.

Alabama, the home of Helen Keller, but, more importantly, the Alabama Institute for the Deaf and Blind, has always been on the cutting edge. Dr. Graham and his staff are absolutely wonderful. It is over a century-old institution devoted to the subject we are addressing today.

I am a proud sponsor of H.R. 3101, and I am happy this hearing has been called. While I am mindful of the few provisions that need to be worked out amongst us, I am hopeful that we can move this legislation forward as we near the 20th anniversary of the Americans With Disabilities Act.

I believe it is imperative that we continue to focus on innovation and ingenuity. Over the last decade we have made great strides in producing technologies that Americans with disabilities rely on. We must remember what brought us here, which was really a free market, less regulation. This bill seeks to mandate certain technologies, and I am sure that we will work this out in committee so that it will be a satisfactory bill for all. These provisions need some work; however, I think the committee in

general is very, very much excited about this bill and I think we will pass it.

Nonetheless, the overall goal of this legislation should be commended. I look forward to working with my colleagues as we press forward to find solutions that extend the benefits of the Internet to people with disabilities.

Mr. Boucher. Thank you very much, Mr. Griffith.

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Mr. Boucher. The gentlewoman from California, Ms. Matsui, is recognized for 2 minutes.

Ms. Matsui. Thank you, Mr. Chairman, for calling today's hearing. And I would like to thank the witnesses for joining us today.

As we continue our efforts to expand broadband access to more and more Americans, disabled Americans must not be left behind. Every American, including those who are challenged, requires access to updated technologies for personal use, to compete for a job, and to be able to communicate and work in a sound environment.

We are seeing a greater need to assist the number of our service members who are returning from the battlefields of Iraq and Afghanistan disabled and are seeking to return to some sense of normalcy. Access to modern technology will help them achieve that.

Disabled Americans should have access to the same communications products and services that everyone else does. I applaud my good friend, Congressman Markey, for his leadership on providing greater technological access to disabled individuals. His legislation would help ensure that the disabled are able to fully access and utilize broadband services and video programming devices, and I plan to add my name today as a cosponsor to this important legislation.

We must modernize technologies to make certain that disabled Americans are able to enjoy the benefits of an increasingly diverse and innovative menu of applications and services. It is my hope that all stakeholders continue to work together to advance this legislation in an expedited fashion.

Mr. Chairman, thank you very much for holding this important hearing today. I yield back the balance of my time.

Mr. Boucher. Thank you very much, Ms. Matsui.

[The information follows:]

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Mr. Boucher. The gentleman from Ohio, Mr. Latta, is recognized for 2 minutes.

Mr. Latta. Thank you, Mr. Chairman, Ranking Member Stearns. Thank you very much for holding this subcommittee hearing today on H.R. 3101, the 21st Century Communications and Video Accessibility Act.

It is my understanding that the legislation would expand accessibility for individuals with vision, hearing, and other disabilities to Internet-enabled communications services, equipment and software. With the latest technology and innovation in the marketplace, it is important that these individuals with these disabilities have access to Internet-related communications and equipment.

I am very interested to hear from our panelists today regarding their ideas and suggestions for helping to reach a consensus on how best to move forward on the issues in this legislation. The Internet and all the communications services related to it is an important tool for employment opportunities. It is also a gateway for individuals to be connected to the greater community.

While working on this legislation, this subcommittee needs to work with all the stakeholders to ensure that all the benefits of the Internet are extended to these individuals with disabilities, without placing mandates on private industry that curb innovation.

Technology is constantly changing, and it is difficult for Congress to legislate policy for new technological devices that will exist in the years ahead. As we move forward on this legislation and other bills in this subcommittee, I firmly believe that we must allow industry to continue to be innovative; and by doing this, it will allow the marketplace to provide for all these individuals. Through the process, we must not mandate such detailed items for certain devices that it prevents technology from moving forward.

I hope that all stakeholder groups involved in this issue can work towards a consensus that better provides access to all individuals with vision, hearing, and other disabilities on these Internet-enabled communication devices, equipment and software. I look forward to the hearing and the testimony today, and I look forward to continuing to work on this important issue.

Thank you, Mr. Chairman. I yield back.

Mr. Boucher. Thank you very much, Mr. Latta.

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Mr. Boucher. The gentleman from Washington State, Mr. Inslee, is recognized for 2 minutes.

Mr. Inslee. Thank you. I just want to thank everyone who is working on this bill because it is important, obviously, not just to the individuals who need this access, but to the whole U.S. economy.

I just want to note that the ability to perfect this technology is important to all of us, not just to those who use the technology, but those who benefit by the genius of those who use technology and their ability to participate in the U.S. economy as employees and associates and business leaders. So it is important for all of us to get this right.

I just want to make one note. I think we do have some work to do on the bill to try to make sure that the disabled community has access to evolving technology. We do not want to limit access to just today's technology, because one thing we know for sure about today's technology is that it will be obsolete and surpassed by new technology within 2 or 3 weeks. And I think there are some things we need to do to the bill to make sure that we capture that evolving technology so that we have full access to all of those new innovations, and I am confident we can do that.

Thank you, Mr. Chairman.

Mr. Boucher. Thank you very much, Mr. Inslee.

[The information follows:]

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Mr. Boucher. The gentleman from Nebraska, Mr. Terry, is recognized for 2 minutes.

Mr. Terry. Thank you, Mr. Chairman. It is interesting, just over our Memorial Week break, I had a couple of meetings. One was with the deaf community on video relay services and some of the actions that are taken by the FCC to make it unaffordable for video relay service providers to continue. Then another group of Alzheimer's patients that are using a new technology, too, to allow special younger onset to use a touch-screen video pad that would allow them to be able to better communicate with their families. So it is interesting that this hearing is after those two meetings where the subjects were the integration of technology to overcome any obstacles by way of a handicap, to neutralize that handicap.

So I embrace the technology, and I want to make sure that we are encouraging the development of technology specifically to aid anyone that has a handicap. What I want to make sure is that we reach the right balance of making sure that this new technology emerges, that it is accessible to all of those who need it without creating economic hardships by way of too many mandates placed on any one technology or system.

So I am anxious to hear from our witnesses today to help us reach that right balance, and I yield back the balance of my time.

Mr. Boucher. Thank you very much, Mr. Terry.

[The information follows:]

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Mr. Boucher. All members have been recognized for their statements.

And we welcome now our panel of witnesses. And I would ask that our witnesses proceed to the witness table. We will be happy to have you appear before us and receive the benefit of your testimony. And while you are taking your seats, I will offer just a brief word of introduction about each of our witnesses this morning.

Sergeant Major Jesse Acosta of the United States Army (Retired) is testifying on behalf of the American Council of the Blind and the Coalition of Organizations for Accessible Technology. And I understand this is the second appearance before our subcommittee for Sergeant Major Acosta.

Ms. Lisa Hamlin is the Director of Policy for the Hearing Loss Association of America, and is testifying also on behalf of the Coalition of Organizations for Accessible Technology.

Mr. Walter McCormick is the President and CEO of the United States Telecom Association.

Mr. Gary Shapiro is the President and CEO of the Consumer Electronics Association.

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

And, Mr. Bobby Franklin is the Executive Vice President of the CTIA, the Wireless Association.

We welcome each of our witnesses this morning. Without objection, your prepared written statements will be made part of our record. We would welcome your oral presentations, and ask that you try to keep those presentations to approximately 5 minutes.

STATEMENT OF SERGEANT MAJOR JESSE R. ACOSTA, UNITED STATES ARMY (RETIRED), AMERICAN COUNCIL OF THE BLIND; JAMES ASSEY, EXECUTIVE VICE PRESIDENT, NATIONAL CABLE AND TELECOMMUNICATIONS ASSOCIATION; BOBBY FRANKLIN, EXECUTIVE VICE PRESIDENT, CTIA -- THE WIRELESS ASSOCIATION; LISE HAMLIN, DIRECTOR OF PUBLIC POLICY, HEARING LOSS ASSOCIATION OF AMERICA; WALTER McCORMICK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNITED STATES TELECOM ASSOCIATION; AND GARY SHAPIRO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CONSUMER ELECTRONICS ASSOCIATION

Mr. Boucher. And Sergeant Major Acosta, you are sitting to the far right of the table, and we will be happy to begin with you. I would ask that you pull the microphone in front of you as close as you can and speak as directly into it as possible, and that way we can hear you better.

STATEMENT OF SERGEANT MAJOR ACOSTA

Sergeant Major Acosta. Good morning, Chairman Boucher, Ranking Member Stearns, members of the subcommittee, and you, sir, Ed Markey, thank you very much for having me here the second time. This is round number two.

Well, as you have heard, it is extremely important that this measure, H.R. 3101, passes, primarily for those of us who find ourselves completely blind, visually impaired, and in other situations with hearing impairment.

I was here a couple of years ago testifying in front of Congress, or this subcommittee, on this issue. Fast forward. Well, some of the measures as far as 21st century has moved forward. We went from analog to digital. But wait. We forgot about the blind and those who have hearing problems. What did that do for us? Absolutely nothing.

The reason why I bring this up immediately is because I just recently bought two giant flat-screen TVs, and not one of them

will show a scroll, so that way I can see what is going on in case of an emergency. Remember, I come from the State of California where we shake and bake. And so here I am, testifying again on these measures.

Well, here is the story that we all don't like to hear, but it has to be said. As I was discussing with a gentleman early this morning, I got hit by a bomb. I had my eyesight all my life. I was a happy camper. I come home, losing my eyes. I had no idea what it was like, living in the blind community. I have been educated tremendously for the past 4 years, now 4-1/2 years, and I have embraced it. I have adapted. But here is one thing I have not been able to embrace. Being that I live in the United States of America, one of the wealthiest, most powerful countries in the world, I laid my life on the line. And I come home in this situation and find myself -- what is out there for me?

Well, it is sad to say not a whole lot is out there for us with the exception, of course, of Apple. Thank you, Apple. Maybe they ought to get into TV production or mass production. But there, again, what does it take for us to serve our blind community or those with disabilities?

It is sad to say that whatever is out there for us, it is going to cost those individuals who -- let's say the blind community, 80 percent are unemployed -- cannot afford to purchase these items. But Apple has made it accessible to us. You pull it out of the package, and there it is. It is all there.

I testified also on the use of the cell phone, the accessibility. That is why I am going back and forth.

And before I do forget, prior to me getting on board that plane, when I testified 2 years ago, there was a company out there, one of the wireless companies that was going after me, wanting to introduce to me one of the most hottest products they had on the market. Well, they met me when I got home after hearing my testimony about how my experiences were with Sprint. Has anything changed? Absolutely not. They introduced to me -- and I have that phone here with me. For some reason or another, I don't know why, I kept it. It is completely flat. It is absolutely no use to me. But I keep it as a backup, so that way I can ask someone to help me, guide me through this phone.

Well, I am sorry to say 34 years of service didn't prepare me for this. Yes, we know all that. I was used to pulling the trigger, pulling the pin and throwing a grenade, digging a foxhole or parapet, crawling, doing what I had to do to the defend this country. So do I have feelings in my hands or my fingers? Absolutely not. I carry with me a phone that is 4 years old, an LG 8300 that is more pronounced. Old, but at least I can feel the buttons and I can dial out. I couldn't do that with this phone introduced to me. And they were doing me a favor?

Well, let me put it in perspective here. By all means, whatever you can do to protect your eyes, whatever you can do to protect your hearing, do so. Because if you fall in the category

I have, don't be surprised, there is nothing out there for you.

We go to the VA system. And I have to bring this up because they are supposed to be able to provide me with devices in order to make my living a little more easier, accessible, and, in some cases, get back to the workforce. What an absolute disaster that has been. I just recently retired from the United States Army, 34 years of service as a Sergeant Major, the highest enlisted in rank. If it wasn't for Southern California Gas Company creating a position for me as a customer service data analyst in management and being able to work with a Webmaster, showing them where they are going wrong in order to improve on the Web site, which they have. What would it take? All it took was a little bit of open arms to greet us.

Listen to us, and let's make a difference together. Let's not make that mistake. Let's pass this initiative, H.R. 3101. Thank you, sir.

Mr. Boucher. Thank you very much, Sergeant Major Acosta. And thanks again for your long service and outstanding service to the United States.

[The prepared statement of Sergeant Major Acosta follows:]

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Mr. Boucher. Ms. Hamlin, we will be happy to hear from you.

STATEMENT OF LISE HAMLIN

Ms. Hamlin. Thank you. Good morning, Mr. Chairman, Ranking Member Stearns, and members of the Subcommittee on Communications, Technology, and the Internet. I am Lisa Hamlin. I am the director of public policy for Hearing Loss Association of America. I am privileged to provide this testimony on behalf of HLAA and the Coalition of Organizations for Accessible Technology.

The 21st Century Communications and Video Accessibility Act of 2009 is a consensus bill supported by COAT and key communications and video program providers, AT&T, Verizon, U.S. Telecom and Windstream. But first, I want to thank you for making this hearing accessible by providing ASL interpreters; the captioning on the screens; and, for me, an assisted listening device, because I use both a hearing and a cochlear implant.

One morning when I was 28 years old, I woke up with a severe to profound hearing loss. The first two devices that I purchased was a volume control phone and a closed captioned -- one of those big old closed-captioned decoders for my television. Those two devices allowed me to feel like I was no longer shut off from the world I once knew. This type of technology helps millions of people, including those baby boomers who are aging into hearing

loss.

During the 1980s and 1990s, Congress took major steps to improve telecommunications access for people with disabilities; however, many advanced communication technologies are not covered by these existing Federal laws. Today, nearly 20 years after the Americans With Disabilities Act became law, it is important to ensure access to communication. Communication allows us equal opportunity to education, employment, and full participation in American civic life and society.

So why don't companies make their products and services accessible? Well, it is possible there are a few reasons. Lack of awareness. They just don't know. An unwillingness to invest in resources or a desire to make the best possible price and reach the broadest market appeal to maximize their competitive edge. However, accessibility should not be subject to a popularity contest.

That is why I am here today. When you tell all companies to make advanced communication services and accessible equipment, all companies are affected equally. Accessibility requires and then spurs innovation and makes products and services more useful to people with and without disabilities. Designing accessibility into new products is more effective and more cost efficient than retrofitting. These are the principles of universal design contained in section 255 of the Communications Act, and they are the principles behind H.R. 3101.

Now, people with disabilities cannot afford to be relegated to obsolete technologies, to only high-end, high-tech, high-cost equipment or to specialized equipment that is hard to find and expensive. We want an equal opportunity to benefit from the full range of advanced communications products and services. And we believe H.R. 3101 will achieve the greatest possible increase in communication access.

We support H.R. 3101's definition of advanced communications to include non-interconnected as well as interconnected VOIP, video conferencing, and electronic messaging. And we support the adoption of the well-established and appropriate undue burden compliance standards for prospective obligations. We also support the requirement of captioning decoder and display capability in all video programming devices, the extension of closed-captioning obligations to video programming distributed over the Internet, and that requires easy access to closed captions via remote-controlled and on-screen menu.

For people who are blind or low vision, H.R. 3101 does require easy access to television controls and on-screen menus, and restores video description rules and requires access to televised emergency information.

Now, it took us decades to achieve hearing-aid compatibility for telephones, both wireless and wireline; 3101 will ensure telephones that are connected to the Internet will be hearing-aid compatible. And when nationwide relay services were established

20 years ago, the only service available was a TTY, which connected TTY users to other telephone users. Today I use relay services with a captioned telephone, but I am unable to connect to friends who communicate in American Sign Language, who use video relay conferencing equipment, because we use two different kinds of relay services. H.R. 3101 will allow us to call each other.

H.R. 3101 will also establish uniform and reliable real-time text standards for communicating in real time over the Internet, which is hugely important in emergency situations.

And, finally, H.R. 3101 will enable income-qualified people with disabilities to use Lifeline or Linkup subsidies for broadband services, and it will authorize $10 million annually from the Universal Service Fund for specialized telecommunications devices needed by people who are both deaf and blind.

Mr. Chairman, I thank you for this opportunity to testify here, and I hope it has given you a little insight into why we support this important bill.

Mr. Boucher. It has indeed. Thank you very much, Ms. Hamlin.

[The prepared statement of Ms. Hamlin follows:]

******** INSERT 1-2 ********

Mr. Boucher. Mr. McCormick.

STATEMENT OF WALTER McCORMICK

Mr. McCormick. Mr. Chairman, Ranking Member Stearns, and members of the subcommittee, thank you for the opportunity to appear before you today.

Mr. Chairman, our industry has a long history of supporting communications access for persons with disabilities. Indeed, our founding father, Alexander Graham Bell, was a teacher of the deaf; and his invention of the telephone in 1876 grew out of efforts to devise a hearing assistance device.

Our industry led the way in developing the first hearing aids and artificial larynxes. And as we approach the 20th anniversary of the Americans With Disabilities Act this July, I would note that Title IV, mandating the creation of a nationwide telecommunications relay service, was one of the first completed and least controversial sections of that landmark legislation.

Likewise, during the mid-1990s, we worked closely with the disabilities community to develop what is now section 255 of the Communications Act, which requires that telecommunications services and equipment be made accessible and useable by the disabled.

Mr. Chairman, in 2008, 2 years ago, at the urging of

Representative Markey, we commenced discussions with COAT aimed at updating the law to reflect the Nation's shift to IP-based communications. Those discussions were comprehensive and productive. Over the course of more than 15 months we learned a lot. Working together, we more precisely identified the needs of the disabled. We also gained an appreciation for the frustrations that the disabled community has with procedures of the Federal Communications Commission.

Today, apart from technical fixes to address minor inadvertent omissions, our joint work with COAT is fully reflected in H.R. 3101. It will extend disability access provisions to IP-enabled services and equipment and to new video programming technologies. Among the bill's most helpful additions to current law are enforcement procedures that will put remedies for noncompliance on the fast track, Lifeline and Linkup support for those who meet eligibility requirements, and the establishment of an advisory committee on emergency access and real-time text to provide recommendations to the FCC and Congress.

And much as we appreciate the introduction earlier this month of S. 3304, Senate legislation, we prefer the House bill because it more appropriately reflects the need for technological parity and a level playing field for all advanced communications service providers and manufacturers.

Mr. Chairman, prior to the 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 at reasonable cost. What our industry has found in the course of the last 25 years is that both we and the disability community benefit from the certainty and focus that a sound and sensible legal road map for achieving accessibility provides. We believe that with such a road map, talented engineers and business people across the Internet landscape will respond in good faith.

Again, we thank you very much for the opportunity to appear today.

Mr. Boucher. Thank you, Mr. McCormick.

[The prepared statement of Mr. McCormick follows:]

******** INSERT 1-3 ********

Mr. Boucher. Mr. Shapiro.

STATEMENT OF GARY SHAPIRO

Mr. Shapiro. Chairman Boucher, Ranking Member Stearns, and members of the subcommittee, thank you for this opportunity to testify on the laudable goal, which I think we all share here, of ensuring access to new technologies by persons with disabilities.

I am very proud to represent some 2,000 technology companies who in a short period of time, both individually and collectively, have changed how all Americans have accessed entertainment and education.

Now, our industry has a very long and proven commitment to providing products and services to the disabled community without government intervention. From advances in screen readers, closed captioning on mobile devices, to GPS applications for the blind, we have radically transformed how most disabled Americans can stay informed and connected.

We have had several meetings with COAT to understand the issues they are trying to address in this legislation, and we agree that there is definitely a need for better communication of the accessible products and services that are available today in the marketplace. With this in mind, we applaud the bill's establishment of a clearinghouse of information of the

availability of accessible products and services.

The consumer electronics industry invented closed captioning, and is a good example of a narrow government intervention with a very positive result. During the process, Congressman Markey changed the proposal to give manufacturers flexibility in implementing the requirement. The result is that captioning comes in various ways through industry-agreed upon standards. And indeed, we are now working on voluntary solutions for closed captioning of video content distributed over broadband networks.

While we share the goal of providing access to technology to all persons, our experience has taught us that voluntary, multi-stakeholder, open due process, and approved standard-setting efforts are a better way to go than simply mandating that every function of every product be accessible to people with every type of disability.

To put it simply, mandating universal design is an innovation killer. Innovation leads to accessibility, not the other way around. The V-chip represents a consumer electronics innovation that turned into a failure after it was rushed through Congress as a mandate and one patent owner imposed huge costs on all involved, as it believed Congress had mandated the use of its technology. The result still today is a cumbersome and complicated system which few parents use. Innovation and parental control technology has happened through market forces entirely outside the congressionally mandated V-chip solution.

So we have to learn from these past mistakes. We understand and we share the desire and compelling case for expanding the access of technology to Americans with disabilities. However, H.R. 3101 is extremely broad in its scope, chilling innovation and entry of new products. Moreover, it ignores the great number of products in the market which are increasing every day and serve the needs of many in the disability community.

According to C-NET, 190 wireless phones are hearing-aid compatible, over 400 are TTY-compatible, over 1,200 have vibrating alert capability, 5 allow audible battery alert, and over 300 have voice control capability. And you can do this with a simple Web search which allows comparisons by accessible features.

Now, certainly we strive to ensure that no American is left behind, but innovators do need flexibility to introduce new products. Given the multiple and sometimes conflicting needs of persons with different levels of ability, manufacturers can address these needs with freedom to invent and sell a great number and variety of products. From a technical and financial perspective, manufacturers simply cannot incorporate every accessibility feature into each and every device.

Now, our written statement is very specific about the concerns we have with this legislation. The definitions are broad. They will likely capture almost every electronic product. Indeed, with the move to Internet protocol V-6, IPV-6, almost every product using electricity will be connected to the Internet.

Video games, lighting and security systems, home control systems, and even automobiles will all be subject to the overwhelming universal design mandates in this bill.

If our objective is to both encourage innovation and provide accessible products and services, this legislation must recognize that we are edging up against the bounds of physics and engineering. For example, hand-held can only have screens so large or so many function keys or buttons before they are rendered unusable.

Another problematic provision in the bill is that it retains the outdated accessibility followed by compatibility regime of section 255, and then makes it worse by saying with this new heightened undue burden standards, today's software-based telecom and media devices are compatible or interoperable with software-based assistive technologies.

Today in America we obviously face a very difficult, challenging economic situation, and it is going to get worse and worse. But we have some secret source, and that is our innovation. We are home to every significant Internet company. We are home to the greatest microchip companies and technology companies like Apple and others. But remember, every one of these big companies started as a small company, and we have to be careful that we don't change how a company can enter the market, and also even how a big company can market a new innovation.

At CEA, we believe we have to remain the most innovative

Nation on Earth, and we urge you as policymakers to recognize our strength and innovation, and examine these policies through the lens of whether it is good or bad for innovation, and thus our economic future.

In closing, we will continue our efforts to ensure that all Americans can reap the benefits of new and emerging technologies. However, due to layers of complexity in this and limitations it would place on the advancement of new technologies, we do not believe as drafted it is the right approach. We have submitted alternative language that improves accessibility to Internet-based communication and video technologies while balancing the need to promote innovation, and we look forward to working with all the interested stakeholders on a legislative approach that reflects the rapid innovation of our market with the desire to ensure that these products and services are accessible to persons with disabilities.

Mr. Boucher. Thank you very much, Mr. Shapiro.

[The prepared statement of Mr. Shapiro follows:]

******** INSERT 1-4 ********

Mr. Boucher. Mr. Assey.

STATEMENT OF JAMES ASSEY

Mr. Assey. Good morning. Thank you. Thank you, Chairman Boucher, Ranking Member Stearns, and members of the subcommittee. I appreciate the invitation to testify before you today on H.R. 3101, the 21st Century Communications and Video Accessibility Act.

As you know, NCTA represents cable operators that serve over 90 percent of the Nation's cable households, providing voice, video, and data services, as well as over 200 cable networks that create and produce high-value video programming. And as leading providers of innovative communications and video services, we share the goals and objectives of H.R. 3101 to ensure that IP-based video, voice, and data services are accessible to those with visual and hearing disabilities.

Over the past several months, we too have had productive discussions with many of the advocacy groups to identify issues, to exchange information, and generally to learn about developments in assistive technology. In addition, NCTA is actively engaged in organizations and standard setting bodies that focus on disability access issues. Accordingly, we applaud the provisions in this legislation and in the national broadband plan that seek to promote similar kinds of dialogue in exchange through industry

forms and information clearinghouses.

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[10:59 a.m.]

Mr. Assey. Having made that broad point, let me focus the rest of my comments on three areas in Title 2 of the legislation where we believe progress can be made if modifications are similarly made to improve the bill, and more importantly, the better support, the collaborative efforts that are necessary to design, develop and bring to market new assistive technologies.

The first area focuses on closed captioning for persons that are hearing impaired. For some time, cable companies have complied with existing FCC rules that require closed captioning on television programming. But clearly as technology has evolved and as investment has fueled the development of broadband networks, cable programming is increasingly available over the Internet. And to their credit, cable programmers have stepped up to the challenge and worked to translate TV captions to Internet formats that can be viewed on various Internet players. But today, that translation can be a cumbersome process. An additional technology barrier that we face is the fact that many of these Internet players are on proprietary formats which require multiple steps in order to have your programming accessible on line.

But the good news is that help is on the way. Over the past 2 years, cable programmers and operators have participated in an

ad hoc group with the Society of Motion Picture and Television Engineers, also known as the SMPTE Group to work towards the development of standards that are designed to make the translation to Internet captions more seamless and to eliminate the need to caption programming multiple times. In light of this ongoing work, we would propose the provisions expanding captioning requirements to the Internet be tailored to recognize and not compete with this inner industry standard setting effort. In addition, we believe that further revision should be made to limit the scope of new obligations to TV programming that is distributed on line and to phase in such obligations over time so that certain operational issues such as when TV programming has to be edited before it is made available on line can be occur.

The second issue I wish to discuss is that of video description. While we continue to have significant concerns about the utility, the cost and the operational complexity of distributing video described programming, the cable industry would propose starting with reinstatement of the SEC's prior video description rules with certain modifications and with sufficient time afforded to implement such requirements. Such a tailored, pragmatic approach will provide needed time to refresh old rules, to secure permissions, adjust budgets to deal with the operational and technical complexities of implementation at a greater scale. But given such uncertainty, we similarly believe that it would be premature for Congress to expand the FCC's authority in this area

beyond the scope of its prior rules until after it has evaluated the impact of such requirements.

Third, we similarly believe that progress will be made with respect to cable menus and program guides. We can make them for accessible through solutions that provide textual information in an audible form. But these solutions are in their nascent stage and operators must be given the time and flexibility needed to design and develop solutions and moreover, these solutions need to be based on functional objectives to avoid locking in any technology specific approaches.

Mr. Chairman, we know as Chairman Waxman said that more can and should be done to improve the accessibility of our products and services for persons with disabilities. And we have no doubt that there are technical and operational complexities that we will face along the way. But we also know that now is not the time to throw up our hands. Now is the time to roll up our sleeves and we stand ready to work with you on achieving pragmatic solutions. Thank you.

Mr. Boucher. Thank you very much, Mr. Assey. Mr. Franklin.

STATEMENT OF BOBBY FRANKLIN

Mr. Franklin. Thank you, Chairman Boucher, Ranking Member Stearns and members of the subcommittee. Thank you for the opportunity to be here this morning. I am Bobby Franklin, and I

serve as executive vice president for CTIA, the wireless association. Your former colleague, Steve Largent, wanted to be here today, but he is on his way to Oklahoma where one of his sons will be married this weekend. In Steve's absence, I am here to share CTIA's thoughts on the best way to ensure that emerging wireless broadband services and devices meet the needs of every American. At the outset, let me say that we are proud of the commitment CTIA's members have displayed to making accessibility a priority. From the enactment of Section 255 in 1996 to today, the evolution and capability has been significant and it is getting better all the time.

Turning to H.R. 3101. We agree that it makes sense to extend the sort of protections incorporated in section 255 of the communications act to emerging services and devices. Over the last several months, CTIA has had extensive discussions with COAT, and I am pleased to report that there are a number of areas such as hearing aid compatibility requirements and the need for an accessibility clearing house where we are in agreement. There are, however, several areas where we have not yet reached agreement and it is on those issues where I would like to focus the balance of my statement.

First, we believe the standard under which our members have operated since enactment of the 1996 Act, a standard that requires equipment and services to be accessible and usable if readily achievable continues to be logical and proper standard to apply to

any new obligations. As a practical matter, when our members introduce new accessibility and functionality features today, even though those functions may not be required by Section 255, they are doing so under the readily achievable standard. The increasing availability of accessibility features and the absence of complaints filed with the FCC is strong evidence that the standard is working and Congress should stick with it.

Second, we urge the committee to consider language to clarify the limits of any new accessibility obligations. In the walled garden that characterized wireless offerings just a few years ago, it made sense to assign the responsibility for accessibility to carriers and manufacturers, however, the evolution toward open platforms and significantly enhanced consumer choice means that carriers and manufacturers have less and less control over service, programs and applications that may be used by consumers. While our members strive to make the products and services they offer accessible, new law in this area should clarify that they are not responsible for applications provided by third-parties, which increasingly occurs without any knowledge on the part of the carrier or the handset maker.

Adding limitations on liability for third party actions would be consistent with this committee's approach in areas such as copyright protection, on line pharmacy regulation, data security protection and Wall Street reform. The committee made an effort in those initiatives to clarify that a service provider is not

liable for the activities of third-parties and that same limiting principle should apply in this instance as well.

Finally, CTIA urges the committee to streamline the bill's reporting requirements. As proposed, these requirements would be costly, raise competitive and confidentiality concerns and do little to provide consumers with useful information about the accessibility features available in wireless products and services. CTIA suggests that the committee consider an approach that would require service providers and manufacturers to maintain records of efforts they have undertaken to implement any accessibility requirements Congress may impose and to produce those records upon receipt of a request by the FCC if a complaint is filed. We believe the bill's proposed accessibility clearinghouse which CTIA and COAT both support will do much more than annual filings to ensure that consumers find the right devices to meet their unique needs.

We believe these suggestions will improve H.R. 3101 and produce a framework that will work for our members and those that need enhanced access to emerging wireless broadband services. We will, of course, be pleased to provide the committee staff with specific legislative proposals that address each of these suggestions. Thank you again for the opportunity to be at today's hearing. I look forward to questions.

Mr. Boucher. Thank you, Mr. Franklin.

[The prepared statement of Mr. Franklin follows:]

******** INSERT 2-1 ********

Mr. Boucher. And thanks to each of our witnesses this morning for your testimony. Let me also take this opportunity to thank each of you again for the collaborative conversations that we have underway. All of you are involved in those along with members and staff at the subcommittee level and our goal through those discussions is to achieve consensus and agreement on the legislation that our subcommittee should approve. I look forward to continuing our work with you on that. I am going to defer my questions momentarily and recognize the author of the legislation, the gentleman from Massachusetts, Mr. Markey for his round of questions.

Mr. Markey. Thank you, Mr. Chairman, very much. Sergeant Major Acosta, thank you so much for your service in protecting our country. Thank you so much for your service today in protecting millions of Americans who are sight and hearing impaired. We thank you for your continued service. Sergeant Major, you heard Mr. Shapiro. Mr. Shapiro is calling for a voluntary system, let the marketplace respond. You were here 2 years ago giving the same kind of compelling testimony. What would you say to Mr. Shapiro? He represents a coalition, the CEO of Microsoft, the CEO of Hewlett-Packard, the CEO of Sony are all part of his coalition. What would you say to the CEOs of these companies? What is your message to Mr. Shapiro and all of those CEOs that he is representing here today who are saying that they want a voluntary system?

Sergeant Major Acosta. Well, sir, thank you very much for that question. To elaborate a bit more, before we started with the hearing here, Mr. Shapiro introduced himself, said I am Gary Shapiro, pleasure to meet you, Sergeant Major Acosta, I am here to testify with you. And at that point in time, I had to stop him. Are you here with me or are you here against me? Because if I leave it in your hands, there is nothing to discuss. We are here to discuss a measure, H.R. 3101, which impacts the entire Nation, which will assist me and millions. I am not just here to represent myself. I represent American Council of the Blind, COAT and millions of blind individuals here in the United States of America. As you recall last year, we had approximately -- we stated 10 million. I am sorry to say, sir, those numbers have doubled and more. They are not decreasing. They are increasing. Not just because of the diseases that are out there as you well know.

In some cases some of us who are coming back from the war zone are completely blind. We didn't expect to come home in this situation, but we have had to embrace it in order to move on with our life. So if you are asking me, sir, would I leave this measure in his hands or let the course take its only time to deal with these issues that we are introducing to you? Absolutely not, sir. It is imperative that this measure passes, H.R. 3101 means the world to us. It brings some sight back to us. It means a whole lot. It may bring back some of the hearing that we have

lost and mind you, sir, I am a package deal.

I am almost like Apple. When I got hit, I suffered through traumatic brain injury. I lost my eyes. I lost my smell, my taste in addition to that, I lost some hearing. So I know what this measure means. As you can see, Mr. Shapiro hasn't lost a thing. Thank you, sir.

Mr. Markey. Mr. Shapiro, what would you say to Sergeant Major Acosta?

Mr. Shapiro. Well, first I thanked him first for his service to our country and it is obviously -- you can't be a human being and not have an emotional response that I think we all share. What I am saying, though, is you cannot require every new product to be responsive to every disability and that is what the legislation you have written requires.

Mr. Markey. My bill does not do that, Mr. Shapiro. My bill does not require and you had an op ed yesterday which was very deceptive. My bill does not require that, and I wish you would just stop repeating that. It is untrue.

Mr. Shapiro. If you go to page 13 of the legislation, the sentence is pretty clear.

Mr. Markey. There is an undue burden provision in the legislation that allows for smaller companies, newer technologies to be able to escape. But if you can comply, if you can provide this technology, you must comply because Sergeant Major Acosta and millions of other Americans need accessibility to it. But there

is an undue burden exception, Mr. Shapiro. And I just wish that you would keep that as part of your discussion and not have this broad brush as your op ed in The Washington Times yesterday suggested, "Bill seeks government control on features on every Internet device you use," "Dems want to redesign your iPhone." This man and people like this man -- and there are millions of them. They are 90 years old. They are small children. They all deserve to have access to this technology, Mr. Shapiro. This is not helpful.

If the CEO of Microsoft and Hewlett-Packard and Sony is maintaining that they cannot meet this burden, then I just think they are dead wrong. I think they have the capacity to meet this burden and they should meet this burden. And they should be sitting here as well defending it, saying they can't do it, can't serve these people in the same way they served our country. And I am talking about the greatest generation all the way down to Major Acosta and small children right now across our country it is not just right.

Mr. Boucher. The gentleman's time has expired. And, Mr. Shapiro, you will have an opportunity. I am going to ask you some questions. The gentleman from Florida, Mr. Stearns, is recognized for his questions.

Mr. Stearns. Thank you, Mr. Chairman. I think the gentleman from Massachusetts is creating an emotional bind here setting up a war hero against a person who is trying to legitimately point out

there are some differences he feels are necessary to be made to the bill. And I think it is unfortunate that the gentleman from Massachusetts did that. He did the same type of thing with the V-Chip and we all know the V-Chip did not work. It was difficult to implement. It was confusing. I don't think there is probably one parent in this country that figured out how to program their computer.

Mr. Markey. Will the gentleman yield?

Mr. Stearns. No, I won't yield.

Mr. Markey. It is not true.

Mr. Stearns. It is true. It is overwhelming. You came out with the same emotional arguments on the V-Chip. You did the same type of thing. I think it is totally unfair for you to set up a war hero with a CEO of an association and try to play that emotional game that you do continually.

So, Mr. Chairman, I think we should allow Mr. Shapiro to speak. He is not saying he wants all voluntary. He is just saying there is a difference between readily achievable and undue burden. And he is just saying look to, Apple, as the gentleman from Massachusetts pointed out, as in their iPad, it is all allowing people who are blind to have accessibility on the iPad, there are also people who have impaired hearing that have accessibility to the iPad.

If it is done in industry on a voluntary basis for the iPad, why can't it be done across industry? I think Mr. Shapiro is

saying write the bill with the goals so that it can be done so that what was done with iPad could be done with all the phones so that the Sergeant Major hero here does not have a 4-year-old phone, but he pulls out a phone like an iPhone which is also like an iPad. I think what we are trying to do in this hearing is not create an emotional frenzy here; we are trying to understand how to do it. You offered this bill, Mr. Markey, 2 years ago, perhaps more. And Mr. McCormick and others have come forward to try to say this is how it should be improved, and lo and behold, that improvement was incorporated.

So I think, Mr. Shapiro and Mr. Franklin, when I hear from his discussion, he is asking look it, there are things we should be doing. We should be very careful not to move on an emotional basis on this because this has a huge impact. I think it is a noble goal what we are doing here, and I think everybody in this room wants to make sure that we have products that provide accessibility for the disabled, the blind and the hard of hearing.

In fact, I have a bill with Eddie Towns that does this for the Blind Association that cars that you can't hear -- we suggest that the automobile manufacturers ought to make some kind of sound so people who step off the curb -- if all the cars in America are electric cars, you can't hear them, they won't be able to hear them either. I am just like everybody else. I want to solve this problem. But I think creating an emotional setup between a CEO and a war hero is not the way to do it. Mr. Shapiro, maybe you

should be allowed to talk in a logical manner about what your concern is with the undue burden, and perhaps most of what you think can be readily achievable can be done.

Mr. Shapiro. Thank you so much, Mr. Stearns. We have 2,500 companies that exhibit each year at the International CES in Las Vegas. Most of those are small startup companies. They are betting their life savings on --

Mr. Stearns. They are not Hewlett-Packards

Mr. Shapiro. We have those as well. And frankly, I am concerned less about them because they have the staff and the ability to respond to the things. They would have to disclose all their business plans under this proposal. But take a company like Chumby. Chumby is a San Diego company that came up with an idea that you could attach a product to the Internet basically and download some features and it could serve as an alarm clock. Under this legislation, in the course of designing that product, they would have to keep careful records, they would have to talk to all sorts of disability groups, they would have to prove -- they have the burden of proof, Congressman Markey.

There is no undue burden. They would have to file all these documents. They would never be funded. And they would also have to prove that they are accessible to every type of disability. This isn't only about vision and hearing. The law as you have written it says every type of disability, physical, mental, everything. It is impossible to know what that is. I think the

role of Congress is to say here is what we are asking you to do, Here are the goals we are trying to reach and go get it, go work with industry and the disability community and come back a proposal that will meet these very specific goals.

But to say every product has to have every feature to meet every disability, I don't know where we would be under this legislation with all the couple of hundred thousand applications that Apple has now. I don't know where we would be if the Internet was -- all these other technologies. The legislation basically applies to everything connected to the Internet. Services -- it appears to be software as well as hardware. This is not only about big companies. This is about entrepreneurs. This is about innovation in this country where we are leading the world and it is going to get us out of this lousy economy. And we can't afford to start saying you have to do everything every little company and every big company for everything. Just be very specific, state the goals, get the facts on the table. We have been proposing suggestions for this for a year now and we still have the same legislation with this very, very broad definition that includes everything and every -- I mean, the requirements for a company here -- startups would go away. I don't know how a company could be funded with this type of requirement.

Mr. Stearns. I just conclude, Mr. Chairman, what he is trying to say is jobs in America are created by small businesses. And if we put the burden on these small businesses, we will not

create jobs. In this economy, we do not need to have mandates that are overly burdensome to the small businesses. And I think Mr. Shapiro's point is basically let us see if we can work it out for this noble goal, and ultimately, I hope we can.

Mr. Boucher. Thank you very much, Mr. Stearns. Notwithstanding the intensity of the dialogue, I would underscore once again that we are involved in a collaborative process and we are working our way toward consensus and we are actually making a great deal of progress. And in order to move us even further along that path, I have several questions, the answers to which I hope will be instructive. Can we get agreement that in terms of assuring accessibility, it is not necessary that the device itself have the accessibility feature built in if there are reasonably priced third party applications that achieve that functionality? Mr. Franklin.

Mr. Franklin. Mr. Chairman, I think you are highlighting a very important point about the evolution in the wireless industry and what is happening each and every day. There are a number of examples that --

Mr. Boucher. Well, without going into all of the examples, I take it your answer would be yes?

Mr. Franklin. Absolutely yes.

Mr. Boucher. Mr. Assey.

Mr. Assey. Yes.

Mr. Boucher. The answer from the cable industry is yes.

Mr. Shapiro?

Mr. Shapiro. Yes.

Mr. Boucher. Another yes. Mr. McCormick. Let the record show that Mr. McCormick is nodding his head. I think that was a yes. Ms. Hamlin.

Ms. Hamlin. I am not an engineer and I am not an attorney. But my concern is if you wait for applications -- when I have my hearing aid compatible phone, I want to make sure it is there. I am not an engineer. But I would want to be absolutely certain that it would actually work. My consumers, people who talk to me, want to be able to open the box and say yes. I found it difficult to get a cell phone because no one knew you had to turn on the telecoil. So it needs --

Mr. Boucher. So maybe I could modify the question slightly and add an assumption or two. Let us assume that the third-party application is functional, that it is readily available and that it is reasonably priced. And if all of those conditions are met, would you agree that the third party application should be acceptable to achieve accessibility?

Ms. Hamlin. Again, I am not the engineer. I just hope --

Mr. Boucher. Just assuming all of that is accurate.

Ms. Hamlin. I am not sure.

Mr. Boucher. We have a not sure. Sergeant Major Acosta, would you care to comment?

Sergeant Major Acosta. Yes, sir. My answer is no. The

reason suitcase the cost. Here we go again with the cost. And when we talk about the cost --

Mr. Boucher. Sergeant Major, my time is a little bit limited. Let me just ask the question in this way. If you require that every device have the functionality embedded, that is going to raise the price of every device that everybody has to pay. Let us assume that the application is reasonably priced. The device itself would therefore be somewhat cheaper. Would that not be a satisfactory outcome?

Sergeant Major Acosta. Well, sir, can I give you an example?

Mr. Boucher. Sure.

Sergeant Major Acosta. I am going to go buy me an iPhone and I am going to pay one price. I am going to go buy me an iMac or the Mac Pro, I am going to pay one price and everything is going to be in there. Those items are going to be a lot less expensive than if I was to go buy a Microsoft or an IBM compatible laptop or PC. And adding the software to it -- I will give you one prime example -- JAWS $1,400. Oops I just went over the price of an Apple.

Mr. Boucher. That would not be reasonably priced software. But assuming a reasonable price and one can perhaps differ as to what that is. Assuming that you have an affordable price for individuals, would you not agree that a third-party application would be satisfactory?

Sergeant Major Acosta. I am sorry. What would be

reasonable?

Mr. Boucher. A lot of the applications that are purchasable today are a dollar or 2. That is fairly common in the app store.

Sergeant Major Acosta. Well, sir, what would be reasonable to us compared to the industry that is putting out the market?

Mr. Boucher. If you require that the device, every device that is marketed be embedded with the functionality, that raises the price of all of the devices. And so it is a question of whether everyone pays this cost or whether the additional marginal cost, which again, would not be that great, would be borne by those that are desiring that accessibility.

Sergeant Major Acosta. Well, sir, again, when we went from analog to digital, the government handed out coupons to be able to afford these items. Aren't they going to do the same thing?

Mr. Boucher. Thank you, Major Acosta. I think we understand that you don't welcome that concept. Let me ask this question: The FCC has hearing aid compatibility standards for cell phones. Those apply not to every cell phone, but to a percentage of the cell phones. And these functionality requirements address things like -- or assure things like a variety of devices instead of one standard device. A variety of functionalities, instead of one standard functionality and also a variety of prices based upon the various devices that are available and their functionality.

So my question to you is would a similar kind of approach work with regard to accessibility for the hearing impaired on

other kinds of devices or for Internet accessibility with regard to cell phones themselves? The legislation before us, basically, requires the functionality for all devices unless it is established that to embed that function would constitute an undue burden. So would it be -- would it be better to adopt the FCC's approach with regard to cell phones that exist today so that it is only a percentage of devices for which this accessibility functionality is required? Who would like to answer? Ms. Hamlin?

Ms. Hamlin. Again, part of the problem is -- we went through a long, hard negotiations to get to that point. And we wanted to work with industry and we were happy that we came to that. But the problem is -- there are two problems, first of all, that the companies must then meet the requirements and then the consumers have to know. People like myself who came into hearing loss suddenly and people who age into it may not even know. So it has to be incumbent upon people to also let people know.

So I go to my Web site now to find out which cell phones are compatible and then I go to my store and I find out, well, okay, there is a list of compatible phones, but they are not available anymore. So it would have to not just be a matter of coming up with a way to say, okay, we have a percentage. But they would have to really meet them, they would have to really meet the percentages and we would have to also make sure that people actually understood what cell phones --

Mr. Boucher. What it is they are buying?

Ms. Hamlin. What it is they are buying, how are they going to get a hold of it.

Mr. Boucher. If the percentages are actually hard requirements and if there is clear marketing information available, potentially that approach could work.

Ms. Hamlin. It might be able to work.

Mr. Boucher. Okay. Thank you, Ms. Hamlin. My time has expired. The gentleman from Alabama, Mr. Griffith, is recognized for 5 minutes.

Mr. Griffith. Thank you. And we appreciate this testimony and the back and forth is invaluable to us. I would say this, that this is a very innovative and creative area of our economy and the ingenuity that has been displayed over the years has just been remarkable. We have gotten as far as hearing is concerned. I think the quote from Helen Keller was my loss of sight separates me from objects, my loss of hearing separates me from people. We are all sensitive to that.

I will give you an example. If we required every biotech company to develop a drug that treated every cancer, there would be no innovation. We would not be here where we are today with the breakthroughs in melanoma, et cetera. We are going to see the same breakthroughs. We are going to see the same breakthroughs for our hearing impaired, our sight impaired and we are making great progress. I hope that this bill will be worked out to the satisfaction of all. We have got to move it and realize that

these little small, small companies with 1 or 2 people that come up with this idea in their garage and they work at it after work is over and come up with the things that have really made a difference in our lives in America. It is the unique culture of America that allows that.

I don't really have any questions for you because I think every one of your hearts are in the right place and I hope that we will reach the right conclusion. Thank you, Mr. Chairman.

Mr. Boucher. Thank you very much, Mr. Griffith. The gentleman from Washington State, Mr. Inslee, is recognized for 5 minutes.

Mr. Inslee. Thank you. I want to ask the question about how we design the bill to make sure that we capture new innovations, that we don't freeze in time existing standards and don't take advantage of innovations. Let me give you an example. One of the things the bill right now requires a button on a remote control, designated for activating the closed caption function.

As new innovations move forward, perhaps we will have voice activated or have other systems other than a button. I guess the question I would like to ask the panel, how do we design a system to capture new generations of innovation? Let me give you an example. Would it be better to define the user experience that we expect? For instance, we expect something that will activate a particular activity that will only require two actions by the user and then let the technology develop as to what those two actions

are? In other words, we define it based on the user interface rather than the particular technology. I just would ask the panelists, is there a way to do that and a way to make sure that we capture new generations of technology. Would anyone like to offer a thought in that regard?

Mr. Assey. I will try, Congressman. I think what you point out is something that I mentioned that is critically important that when we address some of these issues, that we address them from the standpoint of achieving a functional objective, a button on a remote may work in some cases, it may work and not. In other cases, it may not. But what is important is that we have a clear idea of the problem that we are trying to solve and then we turn over to the engineers the best way to try and achieve that problem. And that hopefully will allow for new innovative solutions that may ultimately reach the same functional goal.

Mr. Inslee. So I would like to work with any of you that have suggestions about how to refine the bill in that direction. I think it makes sense to think about this from the user perspective rather than the particularly defined technology. The second question I want to ask the panelists is about the undue burden in the bill right now and I think there is something we ought to at least think about what that means. Right now I would understand this if a company -- let us just take a large manufacturer that is going to come out with a relatively niche product -- and the bill as written would require access -- unless

it is an undue burden for the entire manufacturing company, for the revenue stream the way I would look at this, for the whole revenue -- compared to the whole revenue stream of the whole company.

So let us assume you have got a $2 billion-a-year company and you have got a product that may only generate a million dollars revenue. Right now, as I understand the undue burden requirement, you would compare the cost of doing the access for the new product against the revenue stream of the entire company, which may, I suppose, could exceed the entire proposed revenue of that particular niche product.

I guess a question I have is, would it make any sense for us to define the undue burden as comparing it as the undue burden compared to the revenue stream of the product that we are talking about? Would that be a more rational way to define undue burden? I guess the reason I suggest this is that if you compare the cost of the entire cost of the entire corporation, you may just decide not to produce the product at all. And we want to make sure we get these products out there. So I guess I would ask for the panelists' comments about that idea.

Mr. Shapiro. Congressman, I think you raise an excellent point and that is why we think the undue burden standard is inappropriate and we use a reasonably achievable standard. And if you think about it -- readily achievable. If you think about it, the example you just gave, that company would not produce that

product because if it is going to cost them -- it is not only the revenue stream, if it costs more than the profit, they just don't produce it.

Mr. Inslee. To short circuit your answer a minute. I consider undue burden a little higher obligation on the manufacturer than readily achievable. What I am suggesting is that you maintain the undue burden language but you apply it to the revenue stream of the product involved. Do you see what I am suggesting?

Mr. Shapiro. I understand what you are suggesting, but still what you are saying is unless as a manufacturer, making that decision to invest in the research and development, the design, all the things required, talking with different portions of the disabled community, figuring out -- and even then you don't know if you have an undue burden unless you get a special exemption from the government saying you have an undue burden. That is why we are so concerned about innovation. Undue burden is the wrong standard here in our view. We believe readily achievable has worked very well. Undue burden is for the construction industry for something that will last 30 or 40 years. These technologies have a shelf life of 2 or 3 years at the max and you have to respond quickly. This would be a choke collar around innovation.

Mr. Inslee. Ms. Hamlin, did you want to add something?

Ms. Hamlin. I have to admit and I am very concerned about it, we look at innovation and we want innovation. But here is

what I see this bill does that sort of answers that is that we are not just looking at one company. You are not saying only one company has this extra added issue that they have to deal with. It is all of them across the board. So now the playing field is level. Now you have everybody at the same standard.

So that -- okay, everybody now has to look at the same issue and design in the same way so the cut throat industry that is so eager to get everything out so quickly, if everybody is on the same page, I think, it is my feeling, that that will answer that question and help us get the products we need and the companies not have to feel like they have to kill each other to get to that point.

Mr. Inslee. Thank you.

Mr. Boucher. Thank you very much, Mr. Inslee. The gentleman from Nebraska, Mr. Terry, is recognized for 5 minutes.

Mr. Terry. Thank you, Mr. Chairman. And let me first compliment you and Mr. Inslee on what I thought were appropriate, probing questions which are a part of the process at a hearing like this where we really want to figure out how to make this the best bill that is possible and achieve the goals of the bill. In that regard, let me then take a personal point of privilege here to say that I just feel slimed right now, politically slimed by the setup by -- question by Mr. Markey, and I apologize to everyone of you up there that had to be a part of that or were put into that position. That just seems to be the tone right now with

the leadership that is in charge of this place. It is intimidation and how dare anyone have an opinion different.

And if you dare to express it openly, we will come after you. And, Mr. Shapiro, you just saw what the new tone in Washington is. We have seen it from Mr. Markey before, with cap and trade. We had a gentleman that testified from a major electrical generation company and dared to testify in opposition and within hours had a filing to investigate him at the request of Mr. Markey. That is the level of intimidation that is occurring here right now. And I --

Mr. Boucher. Mr. Terry, let me --

Mr. Terry. You don't need to suggest that we -- I think your point has been made. Let us direct questions towards the issue that we have before us. Terror, in all due respect, Mr. Chairman, you did not ask Mr. Markey to do the same thing.

Mr. Boucher. Well, Mr. Markey was addressing the subject matter, Mr. Terry.

Mr. Terry. No. Mr. Chairman, in all due respect -- reclaiming my time. In all due respect, Mr. Markey was pitting 2 witnesses against each other to create a fight between them and that was demeaning to this subcommittee. Mr. Chairman, your questions were completely appropriate. And that is the questions I thought we were going to ask here today. So let me help clarify.

Ms. Hamlin, you seem to have a pretty good grasp and feel,

but I need to kind of work through this a little bit with -- I am confused. If there is a Mac that doesn't provide -- I am sorry -- a Mac Pro that provides applications that you feel are necessary for you with your hearing loss but a Microsoft product doesn't, is this bill supposed to make the Microsoft one have exactly the same applications as the Mac Pro? Is that the goal?

Ms. Hamlin. People with hearing loss -- and I believe it is true with people with vision loss as well -- have a wide range of needs. My needs -- I have a hearing aid. I have a cochlear implant. My needs may be different when I pick up a cell phone than someone else. If you design it so that I can use it, somebody with a mild hearing loss, somebody who aged into hearing loss or so that grandma can use it, as well as somebody who has a significant loss can pick it up and read the text and be able to have that as well, then you have created a universal design so that the Sergeant Major can also use it. So I don't have to worry about, okay, I go to the phone -- everybody said how wonderful Apple is. I cannot use an Apple phone because it isn't compatible with my hearing aid. If you created an Apple now, I get all the wonderful features that Apple has that I cannot get here. But that --

Mr. Terry. That is an interesting point.

Ms. Hamlin. What I want is to have everyone have that access. And people who age into their hearing loss simply do not know, just as the Sergeant Major didn't know before he learned

about vision loss -- I didn't know before I woke up one morning about hearing loss. People don't know what is available. If it is out there, you don't have to fiddle around and wonder what do I do now.

Mr. Terry. I am trying to work my way through this. In regard to Mr. Boucher's questions about some cell phones are capable with hearing aids, some are not. So the position would be that all should be?

Ms. Hamlin. My position would be, yes, I would love to see every single cell phone compatible with anyone who wants to -- because I am not worried about me so much. I am worried about my son and my daughter. They need access to the Internet. They can't work. I want them to pay taxes and work.

Mr. Terry. That is the question. If there are items out there that accomplish that task, is it an undue burden in essence and I think we need to discuss what undue burden really means, but my time is up. But the question is then if there is products out there that are reasonable and accessible, does that mean that every one has to adopt it? I yield back.

Mr. Boucher. Thank you very much, Mr. Terry. And the we want to thank you each of our witnesses for attending here today, sharing your views on this matter with us. Your testimony has informed us. I will, again, thank you all of you for the collaborative process we have underway to try to reach census and agreement on this measure and we are making great flog that

exercise.

I would encourage you to redouble your efforts in that respect and attend all of the meetings and share your good thoughts on how we can reach consensus because it is our intent to bring this legislation to markup in the not too distant future. We haven't picked a date yet. But it is around the corner and so we need your help to move as rapidly as we possibly can. With the committee's thanks to each of you, to all of our witnesses for your comments today, this hearing stands adjourned.

[Whereupon, at 11:43 a.m., the subcommittee was adjourned.]