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

June 28, 2010

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

Fr: Committee on Energy and Commerce Democratic Staff

Re: Subcommittee Markup of H.R. 3101, the Twenty-first Century Communications and Video Accessibility Act of 2009

On Wednesday, June 30, 2010, at 2:00 p.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications, Technology, and the Internet will meet in open markup session to consider **H.R. 3101**, the "Twenty-first Century Communications and Video Accessibility Act of 2009".

H.R. 3101 was introduced on June 26, 2009, by Rep. Edward J. Markey (D-MA). The bill was referred to the Subcommittee on Communications, Technology, and the Internet, which held a legislative hearing on H.R. 3101 on June 10, 2010.

I. BACKGROUND

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

Although Congress has previously acted to ensure access to communications devices by people with disabilities, these laws were last updated in 1996. Since that time, the communications marketplace has undergone a fundamental transformation, driven by broadband. Internet-based and digital technologies are now pervasive, offering innovative and exciting ways to communicate and share information.

Through increased mobility and the use of data, the benefits of modern technology have profoundly altered our everyday lives, streamlining tasks and allowing mobile access to the Internet and an increasingly diverse menu of applications and services. Blackberries, global positioning systems (GPS), and video conferencing are but

a few of the many technologies that Americans rely on daily. The extraordinary benefits of many of these technologies, however, are not currently accessible to individuals with disabilities.

A. Americans with Disabilities

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

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

Disabilities access disproportionately affects American service members returning from Iraq and Afghanistan. Current studies indicate that 13% of combat troops wounded in hostile operations sustain penetrating eye trauma resulting in some vision impairment. Additionally, between 12% and 20% of veterans have experienced traumatic brain injury (TBI), and 64% of service members who suffer TBI test positive for visual dysfunction.[3] Finally, 58,000 veterans have reported ringing in their ears after returning from deployment to Iraq or Afghanistan, and the Department of Veterans Affairs reports that hearing loss will affect 800,000 veterans by 2011.[4]

B. Current Statutory and Regulatory Structure

The statutes and regulations that govern access to communications and video programming for persons with disabilities were enacted when voice communications were transmitted via traditional telephone lines and television was broadcast using analog signals. Since that time, broadband networks have emerged as the dominant mode of communication and digital technologies dominate media. In light of this transition to broadband and digital media, the National Broadband Plan recently issued by the Federal Communications Commission (FCC) recommends that the Department of Justice "amend

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[1] *See, e.g.*, Cornell University, *2008 Disabilities Status Report – United States, Rehabilitation and Training Center on Disability Demographics and Statistics*, p.32 (online at http://www.ilr.cornell.edu/edi/disabilitystatistics/).

[2] United States Census Bureau, *The Next Four Decades – The Older Population in the United States: 2010-2050* (May 2010) (online at www.census.gov/prod/2010pubs/p25-1138.pdf).

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

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

its regulations to clarify the obligations of commercial establishments" under the Americans with Disabilities Act "with respect to commercial websites."[5]

II. SECTION-BY-SECTION SUMMARY OF H.R. 3101

A. Title I – Communications Access

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

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

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

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

Section 105. Universal Service. Expands the ability of individuals with disabilities to access the universal service fund for the provision of advanced communications services and specialized equipment.

Section 106. Emergency Access and Real-Time Text Support. Establishes an advisory committee to examine issues related to access to emergency services and so-called "real-time text" services by those with disabilities.

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

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

B. Title II - Video Programming

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

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

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

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

An amendment in the nature of a substitute will be offered at Subcommittee markup to make changes to the bill based on ongoing discussions among staff and stakeholders about this legislation.