

ALERT

FCC Finally Determines Scope of “Interoperable Video Conferencing Services” under the CVAA, Seeks Comment on Accessibility Performance Objectives

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Driven by the central role that video conferencing services took on for millions of people during the COVID-19 pandemic and continue to have today, on June 12, 2023 the Federal Communications Commission (FCC or Commission) released a Report and Order (Order) concluding that federal accessibility obligations under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) apply broadly to “services provided on a variety of commonly used video conferencing platforms.” In a Notice of Proposed Rulemaking (NPRM) accompanying the Order, the Commission seeks comment on adding specific accessibility performance objectives to its existing Part 14 rules to address interoperable video conferencing services. The Order will be effective 30 days from Federal Register publication, but covered entities will have one year to come into compliance. Comments and reply comments on the NPRM will be due 30 and 60 days after Federal Register publication, respectively.

Background

The Order resolves a long-standing question about the Commission’s accessibility rules: which services are covered by the CVAA’s mandate that “interoperable video conferencing services” (IVCS) be accessible to persons with disabilities?

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The IVCS accessibility obligations are part of a broader mandate for “advanced communications services” (ACS) imposed by Section 716 of the Communications Act, as amended by the CVAA (and codified at 47 U.S.C. § 617). The statute defines ACS to include four categories of services: IVCS, interconnected voice over Internet protocol (VoIP), non-interconnected VoIP, and electronic messaging. Under Section 716, covered providers and equipment manufacturers must ensure that their services and equipment are “accessible to and usable by individuals with disabilities,” unless doing so is not achievable.

While IVCS is defined in the CVAA, ambiguity surrounding the scope of this service category raised questions about its application for over a decade. Under the CVAA, an IVCS is a “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.” In adopting rules in 2011 to implement the CVAA, the Commission found the record insufficient to determine how exactly to define “interoperable” in this context. As a result, the extent to which the Commission’s Part 14 accessibility rules for ACS apply to video conferencing services like Zoom, Microsoft Teams, and Webex was left unresolved.

Given the significant growth in the use of video conferencing platforms during the COVID-19 pandemic, and the extent to which that use “outlasted the pandemic quarantine measures,” the Commission in recent years has set out to determine whether persons with disabilities are able to make effective use of the technology. In April 2021, the Consumer and Governmental Affairs, Media, and Wireless Telecommunication Bureaus issued a joint Public Notice seeking comment on the accessibility of video conferencing services. In response, accessibility organizations identified concerns with the application of the CVAA to modern, IP-based video conferencing platforms.

In April 2022, the Consumer and Governmental Affairs Bureau issued a subsequent Public Notice seeking to refresh the record on the meaning of IVCS. Accessibility groups argued that the definition of IVCS should be applied as written in the statute, without modification, and that the word “interoperable” does nothing to limit the definition’s scope. Conversely, industry groups asserted that “interoperable” does indeed limit the scope of covered services, and that only services that interoperate between platforms, networks, or both should be considered covered entities.

Extending Accessibility Obligations to Video Conferencing Platforms

In the Order, the Commission sided with accessibility groups, stating that it “finds no persuasive reason to modify or limit the scope of the statutory definition of [IVCS]” and concluding that Part 14 of the Commission’s rules applies to *all* services and equipment that provide real-time video communications, including audio, to enable users to share information of the user’s choosing. According to the Commission, “[w]hat matters is that two or more people can use the service to share information with one another in real-time, via video[,]” making it clear that the accessibility obligations will apply broadly to video conferencing platforms going forward.

Providers of video conferencing platforms will need to carefully evaluate the functionality of their services, and may need to introduce new features to achieve compliance. Section 716’s accessibility mandate is broad, and subject to only limited exceptions. As noted above, ACS providers and equipment manufacturers must ensure that their software, services, and equipment are accessible and usable, and may decline to do so only where compliance is “not achievable.” In this context, “achievable” means “with reasonable effort or expense” as determined by a Commission multi-factor analysis. Where accessibility is not achievable, providers must ensure that equipment is “compatible” with peripheral or specialized equipment that persons with disabilities can use to achieve access, unless compatibility is likewise not achievable.

The Commission’s Part 14 rules, in turn, lay out the specific requirements and performance objectives for achieving compliance with Section 716. In particular, Section 14.20 provides more technical detail on achieving compatibility. Section 14.21 sets out performance objectives that would enable individuals with visual, auditory, cognitive, or physical disabilities to be able to use ACS equipment or services. For video conferencing platform providers looking to comply with this rule for the first time, access for individuals with hearing, visual, and speech disabilities will be critical given the nature of video conferencing platforms. Section 14.21 also provides that for covered equipment or services to be “usable,” consumers with disabilities must have access to the same functionality, documentation, and technical support associated with the product as individuals without disabilities. Finally, Section 14.31 requires covered entities to maintain certain records and to submit an annual filing certifying to the FCC that records are being kept in accordance with the requirements.

Notice of Proposed Rulemaking

In addition to reaching conclusions about the scope of the IVCS category under the CVAA, the Commission also issued an NPRM proposing to amend its rules in two ways to improve the accessibility of video conferencing.

First, the NPRM proposes to adopt additional performance objectives under Part 14 to: (1) include the provision of speech-to-text (i.e. captioning of voice communications during a video conference) and text-to-speech; and (2) enable the use of sign language interpreting. With regard to captioning, the NPRM would require IVCS providers to offer at least one mode with captions that are “accurate and synchronous” and would use Telecommunications Relay Service (TRS) Fund-supported captioned telephone services as a performance benchmark. (TRS is an umbrella term for an operator-based service that allows persons who are deaf or hard of hearing, or who have a speech impairment, to place and receive telephone calls using a keyboard or other assistive device.) Additionally, the NPRM proposes to integrate the provision of TRS and Video Relay Service with video conferencing platforms, inviting comment on potential challenges to this approach and identifying rules that may need to be modified to accommodate it.

Second, the NPRM proposes to amend Part 64 of the Commission’s rules to provide that the TRS Fund can be used to support the provision of TRS for video conferencing users, regardless of whether or not the video conferencing platform can be accessed via a North American Numbering Plan telephone number.

Conclusion

The Order and NPRM are a significant step in the FCC’s efforts to ensure that video conferencing services are accessible pursuant to the CVAA’s mandate. Providers of video conferencing services and manufacturers of equipment used for such services should begin to evaluate the accessibility of their products against CVAA obligations, monitor the ongoing proceeding closely, and provide input to the FCC as necessary to ensure that any changes to the Part 14 performance obligations are both consistent with the design of their products and properly account for any implementation hurdles.

For further information about the Order and the NPRM or questions about compliance with these new accessibility obligations, or if you are interested in filing comments in this proceeding, please contact one of the attorneys listed or your usual Wiley contact.

Jackson McNeal, a Wiley 2023 Summer Associate, contributed to this alert.