

FCC Requires Mobile Phone Manufacturers and Service Providers to Make Internet Browsers Accessible to the Blind and Visually Impaired by October 2013

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On April 29, 2013, the FCC released a Second Report and Order addressing the accessibility requirements of Internet browsers on mobile phones for the blind and visually impaired that it failed to address in January 2012 when it released a Report and Order implementing provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") to ensure that people with disabilities have access to advanced communications services ("ACS"). The substantive obligations will go into effect at the same time as the CVAA's substantive obligations take effect, on October 8, 2013. The recordkeeping obligations, however, went into effect on January 30, 2013.

Who Is Covered and What is Required?

Section 718 of the Communications Act (which was added by the CVAA) and the FCC's new regulations require that (1) manufacturers of mobile phones that include an Internet browser, and (2) providers of mobile services that arrange for the inclusion of a browser in mobile phones to sell to customers, must ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. The obligations do not apply to developers of Internet browsers included in mobile phones.

After seeking additional comment on the matter in the Further Notice of Proposed Rulemaking included with the January 2012 Order, the FCC determined that there is somewhat overlapping coverage of mobile phone Internet browsers in Sections 716 and 718 of the Communications Act. Section 716 applies to all Internet browsers used for ACS (e.g., laptops, tablets and mobile phones) and Section 718 applies only to Internet browsers built into mobile phones but used for any purpose (not just for ACS). Further, Section 716 requires accessibility for all individuals with disabilities and Section 718 requires accessibility for only those individuals that are blind or visually impaired.

No Compliance Safe Harbor

Covered entities can comply with the accessibility obligations with or without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment that are available to consumers at nominal cost and that individuals with disabilities can access. The FCC determined not to mandate that covered entities include an accessibility application programming interface (API) in mobile phones. However, it also declined to establish the inclusion of an

accessibility API in a mobile phone as a safe harbor for compliance with Section 718 and the FCC's new rules.

In keeping with the FCC's approach to disabled access requirements, industry has been given a great deal of flexibility regarding how it can comply with the requirements, but not much guidance. The FCC noted that it may consider providing performance guidelines after the Access Board adopts industry technical guidelines implementing Section 255 of the Communications Act, which requires accessibility for telecommunications equipment and services.

What is the Deadline for Compliance?

The accessibility requirements for ACS pursuant to Section 716 and for mobile phone Internet browsers pursuant to Section 718 are both effective on **October 8, 2013**.

Recordkeeping and Certification

The FCC determined that the recordkeeping obligations of Section 717 of the Communications Act apply to entities covered by Section 718 and those obligations were effective as of January 30, 2013. The FCC declined to delay the effective date for Section 718 entities because of the statutory language and the notice provided by the January 2012 order. Therefore, entities that did not file the annual certification that records required to be maintained are being kept in accordance with the CVAA by April 1, 2013, but that are covered by Section 718 as described above, should file the certification. (There is no small business exemption for Section 718 entities.) Similarly, entities that may have registered and certified as equipment manufactures or providers of telecommunications or ACS may need to amend their registration to include "Mobile Phone Equipment Manufacturer that includes an Internet browser" or "Mobile Phone Service Provider that arranges for inclusion of an Internet browser" if they are covered by Section 718 as described above.