

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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In the latest of its orders to implement the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"), [the FCC released a Second Report and Order](#) addressing the accessibility requirements of Internet browsers on mobile phones for the blind and visually impaired. This order adopted requirements for which it sought further comment in January 2012 when it released a Report and Order implementing provisions of the CVAA to ensure that people with disabilities have access to advanced communications services ("ACS"). The substantive obligations for mobile phones will go into effect at the same time as the CVAA's substantive obligations for ACS services take effect, on October 8, 2013. The recordkeeping obligations, however, went into effect on January 30, 2013.

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.

The FCC emphasized that its rules overlapped with the rules applicable to Internet browsers generally. Section 716 applies to all Internet browsers used for ACS (e.g., laptops, tablets and mobile phones), while 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, while Section 718 requires accessibility for only those individuals that are blind or visually impaired.

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. Specifically, 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.

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**. However, 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.

For more information, please click [here](#) to read the Kelley Drye Client Advisory.