

ALERT

FCC Disability NPRM Sweeps in Previously Unregulated Entities and Services

March 10, 2011

Updated on March 22. On March 3, 2011, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM) to ensure that IP-based equipment, services and software are accessible to persons with disabilities, consistent with the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The CVAA requires the Commission to adopt implementing rules within one year.

The NPRM proposes to expand significantly the class of entities subject to accessibility requirements to include (but not limited to):

- manufacturers of equipment used for and providers of non-interconnected VoIP services, including resellers, aggregators and non-network based providers;
- software manufacturers and service providers, including "app" providers;
- electronic messaging services, including SMS "text" messaging, instant messaging and electronic mail;
- interoperable video conferencing equipment and services;
- webinar services; and
- gaming consoles.

The NPRM also proposes that covered entities be subject to substantial record keeping requirements to track compliance, and annual certification by an officer that such records are being properly maintained. Such records would be subject to FCC inspection upon request. The Commission further proposes to make the informal complaint process more rigorous by requiring a response within 20

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days of receipt of a complaint explaining why the requested accessibility was "not achievable," including certification by an officer that accessibility was "not achievable" and supporting documentation.

The NPRM is of interest to all potentially covered entities. Comments and reply comments are due on April 13, 2011, and May 13, 2011, respectively. *Federal Register* notice of the NPRM was given on March 14, 2011, 76 FR 13800.